(17,368.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 262.

THE NEW YORK LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

FANNIE CRAVENS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Caption	1	1
Writ of error	2	1
Transcript filed	3	2
Transcript from circuit court of Jackson county	3	2
Petition	3	3
Answer	7	6
Reply	15	10
Proceedings in circuit court at Independence	15	11
Judgment	16	11
Modification of judgment	17	11
Motion for new trial filed	18	12
Motion to retax costs filed	18	12
Motion to retax costs sustained	18	12
Motion to modify sustained and judgment modified	19	12
Bill of exceptions filed	19	13
Bill of exceptions	20	13
Agreed statement of facts	20	13
Exhibit D—Policy of insurance	25	17
C—Application for insurance	34	22

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 20, 1899.

	Original.	Print.
Declarations made to medical examiner	39	25
Plaintiff's objections to agreed statement	42	28
Motion for new trial	43	28
Motion to retax costs	43	28
Bill of exceptions signed	44	29
Certificate of official stenographer	44	29
Clerk's certificate	44	29
Cause submitted	46	29
Cause transferred to court in banc	46	30
Cause submitted in banc	46	30
Judgment	47	30
Opinion	47	30
Motion for rehearing filed	72	46
Motion for hearing	72	46
Motion to modify the opinion	74	48
Motion for rehearing denied	75	48
Motion to modify opinion sustained and opinion modified	75	48
Opinion as modified	76	49
Writ of error allowed, citation signed, assignment of errors filed, and bond approved and ordered filed	100	64
Assignment of errors	101	65
Bond on writ of error	102	65
Clerk's certificate	103	66

1 The United States of America to Fannie Cravens, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The New York Life Insurance Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of the State of Missouri, this twenty-first day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JAS. P. GANTT,
Presiding Judge.

[Endorsed:] Fannie Cravens *vs.* New York Life Insurance Co. Citation. Filed March 21st, 1899. Jno. R. Green, clerk.

UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri, } *ss:*

I hereby acknowledge due service of the within citation this 21st day of March, A. D. 1899.

WILLIAM B. C. BROWN,
Attorney for Defendant in Error.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1898, thereof, between Fannie Cravens, plaintiff and appellant, and The New York Life Insurance Company, defendant and respondent therein, a manifest error hath happened, to the great damage of the said New York Life Insurance Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the date of the citation in this cause, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that

error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-first day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

{ Seal of the United States Circuit Court for the Western District of Missouri, Central Division. }

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
JAS. B. GANTT,
Chief Justice.

[Endorsed:] No. —. United States circuit court, western district of Missouri. Fannie Cravens *vs.* New York Life Insurance Company. Writ of error to the supreme court of the State of Missouri. Returned and filed 21st day of March, 1899. Jno. R. Green, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 31st day of March, A. D. 1899.

JNO. R. GREEN, *Clerk.*

3 STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 7th day of November, 1894, there was filed in the office of the clerk of the supreme court of the State of Missouri a transcript from the circuit court of Jackson county, in which Fannie Cravens was appellant and The New York Life Insurance Company was respondent; which said transcript is in words and figures as follows, viz:

STATE OF MISSOURI, *County of Jackson,* } *ss:*

Be it remembered that on the 23rd day of September, A. D. 1893, there was filed in the office of the clerk of the circuit court of Jackson county, State of Missouri, at Kansas City, the papers and tran-

script of proceedings on change of venue from the circuit court of Jackson county, Missouri, at the city of Independence, wherein Fannie Cravens is plaintiff and The New York Life Insurance Co. is defendant.

Which petition is in the words and figures following, to wit:

In the Circuit Court of Jackson County, at Independence, Mo., June Term, A. D. 1893.

FANNIE CRAVENS, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE CO., a Corporation, Defendant.

Comes now Fannie Cravens, the plaintiff herein, and complains to this court of The New York Life Insurance Company, the defendant herein, and for cause of action against defendant states that defendant now is, and during all the dates hereinafter mentioned was, a corporation created by and existing under the laws of the State of New York.

4 That said defendant is now doing business and during all the dates hereinafter mentioned did business as a life insurance company in the State of Missouri, and for this purpose maintained an office and kept agents thereat in the county of Jackson, in said State, and is and was during all the dates hereinafter mentioned subject to the laws of the said State of Missouri.

That on the 2nd day of May, A. D. 1887, and long prior thereto, John K. Cravens was a citizen of said State of Missouri and resided in the county of Jackson, in said State.

That on said date and long prior thereto said John K. Cravens was the husband of this plaintiff, and thereafter continued to be the husband of this plaintiff until the time of his death.

That on the said 2nd day of May, 1887, defendant solicited and requested said John K. Cravens, in the said county of Jackson, in the State of Missouri, to insure his life in defendant's company.

That thereupon the said John K. Cravens made written application to defendant through its said agents and servants, then and there being in the said county of Jackson, in the State of Missouri, to purchase and obtain insurance upon his life in defendant's company in the sum of ten thousand dollars ($10,000.00); that said application for insurance contained a clause in words as follows, to wit: That "under no circumstances shall the policy hereby applied for be in force until the actual payment to and acceptance of the premium by the company or its authorized agent during the lifetime and good health of the person on whose life insurance is applied for;" that afterwards said defendant accepted said application of said John K. Cravens, and on the 11th day of May, A. D. 1887, executed its policy of insurance, numbered 250,213, a copy of which is herewith filed; which said policy of insurance contained a copy of the application for insurance made by said Cravens above referred to and made same a part of said policy or contract of insurance.

5 The said policy of insurance was by defendant delivered to said John K. Cravens in the county of Jackson, in the State of Missouri, and that the first premium called for by said clause so contained in said application and policy or contract of insurance and set forth in this petition in the language of said application and policy of insurance was by said John K. Cravens paid to and accepted by the defendant in the State of Missouri.

That said policy of insurance so issued to said John K. Cravens contained a further clause in words and figures as follows, to wit:

Amount, $10,000.

The New York Life Insurance Company by this policy of insurance, in consideration of the agreements, statements, representations and warranties submitted to its officers at the home office in the city of New York, in the written application for this policy, which are hereby referred to and made a part of this contract, and in further consideration of the sum of five hundred and eighty-nine dollars and fifty cents, to them in hand paid, at the office of the company in the city of New York by the assured under this policy, to wit: Fannie Cravens wife of John K. Cravens and of the annual payment of five hundred eighty-nine dollars and fifty cents, to be made at said office on or before the eleventh day of May in every year during the continuance of this policy, until fifteen full years' premiums shall have been paid, doth insure the life of John K. Cravens, lawyer, of Kansas City, in county of Jackson State of Missouri (hereinafter called the insured) in the amount of ten thousand dollars, commencing on the eleventh day of May, 1887, at noon. And the said company doth hereby promise and agree to pay the amount of the said insurance at its office in the city of New York, to the said assured, for her sole use, if living, in conformity with the statute, and if not living, to the children of said Fanny Cravens or their guardian, for their use, or if there be no such children surviving, then to the executors, administrators or assigns of the said insured, upon receipt and approval at

6 said office of proofs, as hereinafter required, of the death, during the continuance of this policy of the said insured, deducing therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid.

Whereby defendant agreed with Fannie Cravens, the plaintiff in this cause and wife of said John K. Cravens, in consideration of the annual payment to defendant of the sum of five hundred and eighty-nine dollars and fifty cents ($589.50) on the 11th day of May of each year until it had received fifteen full years' premium, to insure the life of said John K. Cravens in the amount of $10,000.00 and to pay to said Fannie Cravens the amount of said insurance, to wit, ten thousand dollars ($10,000.00) upon receipt and approval at its office, in the city of New York, of proofs of death of said John K. Cravens during the continuance of said policy; that said John K. Cravens, in addition to the first premium hereinbefore set out and declared to have been paid to defendant, paid to defendant in the State of Missouri each of the annual premiums on said policy of insurance

for the years A. D. 1888, 1889, and 1890 when they became respectively due, and defendant received and accepted same in said State of Missouri—that is to say, said John K. Cravens paid altogether to defendant four full annual premiums on said policy of insurance.

That afterwards, on the 2nd day of Nov., 1892, the said John K. Cravens died in the said county of Jackson and State of Missouri, and on the 30th day of November plaintiff herein delivered to defendant, upon forms obtained by plaintiff from defendant for said purpose, proofs of death called for by said policy of insurance, and said proofs were by defendant at said time received and accepted.

That by virtue of the aforesaid payments of premiums on said policy of insurance said policy of insurance on the 11th day of May, 1891, had under the laws of the State of Missouri acquired a
7 net value and was worth the sum of twelve hundred and ninety $\frac{94}{100}$ ($1,290.94) dollars, computed upon the American table of mortality, with four and one-half per cent. interest.

That neither the said John K. Cravens, the insured, nor the plaintiff was indebted to the defendant at that time for unpaid premiums or on any other account.

That said John K. Cravens on said 11th day of May, 1891, was fifty-three years of age; that three-fourths of such net value of said policy of insurance applied, and, taken as a net single premium for temporary insurance for the amount written in the said policy, to wit, ten thousand dollars ($10,000.00), entitled said John K. Cravens, the insured, to a temporary insurance for said amount for a term expiring six years and forty-six days from May 11th, 1891, and that said policy was by reason of the premises and the provisions of the statutes of Missouri kept and continued in full force and effect until 26th day of June, 1897.

Wherefore plaintiff asks judgment against the defendant in the sum of ten thousand dollars ($10,000.00), with interest, at the rate of 6 %, from the 30th day of November, 1892, and for her costs in this suit expended.

WILLIAM B. C. BROWN AND
KARNES, HOLMES & KRAUTHOFF,
Pl'ff's Att'ys.

The following entry appears upon the back of said petition: "Filed May 15, '93. H. H. Noland, clerk, by H. G. Henley, D. C."

The answer filed in the circuit court of Jackson county, at Independence, Missouri, on the 26th day of June, 1893, is in the words and figures following, to wit:

In the Circuit Court of Jackson County, at Independence, June Term, 1893.

STATE OF MISSOURI, } ss:
County of Jackson, }

8 FANNY CRAVENS, Plaintiff,
vs.
NEW YORK LIFE INSURANCE COMPANY, Defendant.

Now comes The New York Life Insurance Company, defendant herein, and admits that it is a body corporate organized under the laws of the State of New York, but denies all the other allegations of the petition except such as are hereinafter expressly admitted.

Further answering, defendant says that at the date referred to in the petition it was and is now a mutual life insurance company, organized under the laws of the State of New York, and having its chief office in the city of New York, in that State, having no capital stock, being organized for the chartered purpose of insuring lives on the mutual plan by administering the assets derived from the premiums paid solely for the mutual benefit of the policy-holders by whom or on whose behalf such premiums are paid.

Defendant further says that such mutual business has been and is conducted solely upon written applications, signed by the parties desiring to insure upon such mutual plan, and specifying the specific form of policy contract desired, which have been and are forwarded to the defendant's home office for consideration and acceptance or rejection by its officers at said home office.

Defendant further states that among the plans of insurance adopted in the conduct of such mutual business was that known as the "fifteen-year endowment, non-forfeiting limited tontine plan," whereby all the policies issued on that plan in the same year, with the same tontine period of fifteen years, acquired each a contingent interest, in the event of survivorship of the said tontine period of fifteen years, in the profits and surplus derived from the premium on policies of said class which should lapse or for any reason not be

9 in force at the date of the expiration of said fifteen years' tontine period. This plan also included as an essential feature and part thereof, incorporated in the policies issued thereunder to all the policy-holders of the class, a provision for a paid-up policy in event of lapse, as then provided by the laws of the State of New York, and each of the policies issued under said plan contained the same provisions for paid-up insurance in the event of lapse and as to the rights and interest of said survivors of the tontine period.

Defendant further states that on or about the 2nd day of May, 1887, one John K. Cravens, then a citizen of the State of Missouri and a resident of Kansas City, in said State, made his certain application in writing to said defendant, which was signed by said John K. Cravens, the party whose life was proposed to be insured, and Fannie Cravens, his wife, the plaintiff herein, and the party for whose benefit the said insurance was applied for, for a policy of in-

surance on the life of said John K. Cravens in the sum of $10,000.00, which said application, so signed, specifically selected, called for, and described, and requested this defendant to issue a policy of the class and character hereinbefore set forth and described and to contain the terms and conditions specifically set forth in said application. Said written application was by the terms thereof to be transmitted, together with the medical examination of said Cravens, to the defendant, at its home office, in the city of New York, for its consideration there by the officers of the company and its acceptance or rejection by them at said home office. Said written application, so signed and made the basis of the contract of insurance, provided that the entire contract contained in the policy and application should be construed and interpreted as a whole and in each of its parts and obligations according to the law of the State of New York, and therein and thereby the place of contract was expressly agreed to be the principal office of the company in the city of New York.

Said written application, thus signed by said John K. Cravens and plaintiff, selecting the said plan of insurance, specifically provided and required that the policy to be issued thereunder should contain an agreement in words as follows:

"If it shall lapse or become forfeited for the non-payment of any premium after being in force three full years, a paid-up policy shall be issued on demand being made within six months after such lapse with surrender of the policy, under the same conditions as this policy except as to payment of premiums, but without participation in the profits, for such an amount as the net reserve on the policy at the time of lapse, computed according to the American tables of mortality, and interest at 4½ %, after deducting all indebtedness to the company, will purchase as a single premium at the present published rates of the company, at the age of the insured at the time of lapse for an ordinary life policy or for such an amount as shall be represented by as many proportional parts of the sum insured as there shall have been complete annual premiums paid thereon when the lapse or default above referred to shall first be made, if a limited-payment life policy or an endowment policy."

And said application so signed by said Cravens further provided that if this defendant would issue a policy of the character and class applied for containing said agreement for paid-up insurance in event of lapse, said applicant, in consideration thereof, waived and relinquished all right, claim, or interest to or in any temporary insurance, surrender value, or other paid-up policy, whether required or provided for by any statute of any State or not.

The said application specifically selecting the aforesaid plan of insurance was thereupon forwarded with the medical examination of said John K. Cravens to the home office of the defendant, and there, upon consideration, it was accepted according to the terms and conditions therein stated and not otherwise, and thereupon, at its said home office, in the State of New York, this defendant issued a policy of the class and character thus applied for and containing the precise terms and conditions in said application specified, being policy No. 250,213, sued upon in this cause.

Defendant further states that during the same year it issued
11 upon a similar application to parties resident in the different States and Territories of the United States and in foreign countries policies of the same class, with the same, dividend period, each of said applications and policies containing the same conditions, including the aforesaid provision for a paid-up policy in case of lapse or default, was an essential part of each of said contracts of insurance, and without said provision said policy sued upon would not have been issued.

And defendant further says that the law of New York was made the applicatory law of the said contract of insurance evidenced by said policy No. 250,213 by the express agreement of the parties thereto as well as of all other parties holding policies of the same class of the same tontine dividend period, each of whom by the terms of their policy contracts acquired with the plaintiff mutual interests in the profits and surplus to be derived from the premiums on all policies of such class, as hereinbefore set forth.

Defendant further states that said contract and policy of insurance No. 250,213 was conditioned upon the payment of the annual premium of 589.50 therein provided, which, by the terms of said policy, was to be paid at the office of the defendant, in the city of New York and State of New York, on or before the 11th day of May in every year during the continuance of the policy until fifteen full years' premiums had been paid, and by the express terms of said policy if the premiums were not paid on or before the days when due the policy should become void and all payments previously made should become forfeited to the company, except only that the policy contained a provision for a paid-up policy, which was specifically applied for in the application, and which, as aforesaid, was contained in all the policies of the same tontine class, to wit:

"If this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a
12 paid-up policy shall be issued on demand made within six months after said lapse under the same conditions as this policy except as to the payment of premises and the return of premiums paid, but without participation in profits, for an amount equal to as many fifteenths part of the sum above insured as there shall have been complete annual premiums paid thereon when said default in the payment of premiums shall be made; and all right, claim or interest arising under statute or otherwise, to or in any other paid-up policy or surrender value, and to or in any temporary insurance whether required or provided by the statute of any State or not, is hereby expressly waived and relinquished."

It was further provided by said policy that all premiums were due and payable at the home office of said company unless otherwise agreed in writing.

Defendant further states that four annual premiums were paid upon said policy, and that default was made in the payment of the annual premium due and payable on the 11th day of May, 1891, and thereupon said policy contract by its terms lapsed and became void, and all previous payments made were forfeited to this defend-

ant, except that under the terms of said application and policy, the said policy having been in force for three full years, plaintiff became entitled on demand being made within six months after such lapse with surrender of the policy to a paid-up policy for an amount equal to as many fifteenth parts of the sum insured as there had been complete annual payments paid thereon, and defendant states that the amount of paid-up insurance the holder of said policy was entitled to on demand being made therefor, as provided in the policy, was the sum of $2,670.00. Defendant states that no demand for such paid-up insurance with surrender of said policy was made by said John K. Cravens or Fannie Cravens within six months after lapse or at any time.

Defendant states that thereafter proofs of death were filed on behalf of plaintiff herein, stating that the said insured, John
13 K. Cravens, departed this life on the 2nd day of November, 1892, and this defendant then and there offered to waive, and did waive, the failure to make demand for said paid-up insurance provided for in the policy, and offered to pay, and now offers to pay, in full discharge of its liability under said policy the amount so agreed upon by the parties in the said application and policy, to wit, the amount of paid-up insurance which said policy would have been entitled to on demand therefor, the sum of $2,670.00, and this defendant hereby tenders the said amount into court, and says that plaintiff ought not to have any other or different recovery upon said policy, and asks to be hence discharged with its costs.

And, further answering, defendant says that by reason of the facts hereinbefore set forth this defendant has incurred obligations to the surviving policy-holders of the same tontine dividend period to which said policy, No. 250,213, belonged, and said surviving policy-holders have acquired rights, based upon the performance by the defendant and each of the policy-holders of said class, including plaintiff, of the terms of their respective policies, and that this defendant cannot pay to plaintiff any greater amount than that fixed by said policy and which is herein tendered without discriminating in her favor against her fellow policy-holders of the same class, and defendant therefore says that plaintiff is estopped by reason thereof from asserting any claim under said policy other than for the aforesaid sum of $2,670.00, which is herein tendered.

Wherefore defendant asks to be hence discharged.

Further answering, defendant says that the said policy of insurance sued on, No. 250,213, was not entitled to temporary insurance for the amount written in the policy for the term alleged in the petition or for any term whatever, for that the statutes of Missouri in relation to the non forfeiture of life-insurance policies re-
14 lied upon in the petition did not apply and had no reference to the contract of insurance evidence by the policy sued upon, in that the said contract was made under and with reference to the laws of the State of New York, and that the application for said policy was accepted in the State of New York, and, by the express agreement of the parties to the policy and of all parties interested in the aforesaid tontine class, the law of New York was made

the applicatory law of said contract; and defendant further says that its right to make said contract evidenced by said policy of insurance was and is a right and privilege guaranteed and secured to it by the bill of rights and constitution of the State of Missouri and the Constitution of the United States, and if the said statutes so relied upon by plaintiff are construed so as to apply to the said policy of insurance and nullify the said agreement of the parties upon the faith of which the said policy was issued and without which it would not have been issued, then said statutes so construed are violative of the said constitutional right and immunity so secured to this defendant by the constitution and bill of rights of the State of Missouri and the Constitution of the United States.

Wherefore defendant asks to be hence dismissed with its costs.

By its attorneys, JUDSON & TAUSSIG.

F. N. JUDSON, *Of Counsel.*

The said answer is marked on the back in words and figures following, to wit:

Filed June 26, '93. H. H. Noland, cl'k, by H. G. Henley, D. C.

15 Plaintiff's reply to the answer of defendant, filed at Independence July 14th, 1893, is in the words and figures following, to wit:

In the Jackson Circuit Court, at Independence, June Term, 1893.

FANNIE CRAVENS, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant. } No. 4022.

Comes now plaintiff herein and, for reply to defendant's answer filed herein, denies each and every allegation in said answer contained not expressly admitted by plaintiff's petition.

For further reply to defendant's answer plaintiff says that the policy or contract of insurance herein sued upon contains a further clause that all premiums may be paid to agents producing receipts signed by the president, vice-president, or actuary and countersigned by such agents.

WILLIAM B. C. BROWN AND
KARNES, HOLMES & KRAUTHOFF,
Att'ys for Plaintiff.

The said reply is marked on the back in the words and figures following, to wit:

Filed July 14, '93. H. H. Noland, cl'k, by H. G. Henley, D. C.

The transcript of the proceedings had in the circuit court of Jackson county, at Independence, Missouri, is in the words and figures following, to wit:

In the Circuit Court of Jackson County, Missouri, at Independence, September Term, 1893, 2nd Day, September 12th, 1893.

16 FANNIE CRAVENS *vs.* N. Y. LIFE INS. Co. } 4022.

Now comes the parties hereto, by their respective attorneys, and file stipulation for the transfer hereof.

It is therefore ordered by the court, in accordance therewith, that this cause, together with the original papers, be transferred to division No. 2 of this court.

A true copy.

Attest: H. H. NOLAND, *Clerk*,
[SEAL.] By H. G. HENLEY, *D. C.*

On December 9th, A. D. 1893, at and during the regular October term, A. D. 1893, of the circuit court of Jackson county, State of Missouri, sitting at Kansas City, div. No. two (2), Hon. J. H. Slover, judge, presiding, the same being the 53rd day of said term, the following proceedings were had and made of record in the cause entitled—

FANNIE CRAVENS *vs.* NEW YORK LIFE INSURANCE Co. } 18840.

Comes now defendant, by attorney, and files herein objections to sections 17 and 18 of agreed statement of facts.

On the 14th day of April, A. D. 1894, it being the 6th day of the regular April term, A. D. 1894, of the circuit court of Jackson county, the following proceedings were had and made of record in the cause entitled—

17 FANNIE CRAVENS *vs.* NEW YORK LIFE INSURANCE COMPANY, a Corporation. } 18840.

Now, on this day, come parties herein, by attorney, and this cause having heretofore been submitted to the court upon the petition and evidence and the court, being now fully advised in the premises, finds that said defendant is indebted unto said plaintiff in the sum of $2,670.00.

It is therefore ordered and adjudged by the court that plaintiff recover of and from defendant, New York Life Insurance Co., a corporation, the sum of twenty-six hundred and seventy ($2,670.00) dollars, with interest thereon from this day, and all costs herein incurred, and have execution therefor.

A modification of the judgment in favor of Fannie Cravens and against the New York Life Insurance Co. aforesaid is entered on

the margin of the record, opposite the judgment herein; which said entry is in the words and figures following, to wit:

APRIL 24TH, 1894.

I hereby release from the lien of this judgment *of* the west eleven (11) feet of lot two (2), all of lot three (3), and the east fifteen (15) of lot four (4), in block D of the resurvey of Reid's addition to the city of Kansas (now Kansas City), Jackson county, State of Missouri.

FANNIE CRAVENS,
By W. B. C. BROWN,
Her Attorney.

Attest: H. H. NOLAND, *Clerk*,
By H. S. RAGLAND, *D. C.*

(See modification of judgment on page 331.)

On the 17th day of April, A. D. 1894, it being the 8th day of the regular April term, A. D. 1894, of said court, the following proceedings were had and made of record in the cause entitled—

FANNIE CRAVENS
vs.
NEW YORK LIFE INSURANCE CO. } 16012.

Comes now plaintiff, by attorney, and files herein motion for a new trial.

On the 7th day of June, A. D. 1894, it being the 45th day of the regular April term, A. D. 1894, of said court, the following proceedings were had and made of record in the cause entitled—

FANNIE CRAVENS
vs.
NEW YORK LIFE INSURANCE COMPANY. } 18840.

Comes now defendant, by attorney, and files herein motion to modify judgment and also motion to retax costs.

On the 23rd day of June, 1894, it being the 50th day of the regular April term, A. D. 1894, of said court, the following proceedings were had and made of record in the cause entitled—

FANNIE CRAVENS
vs.
NEW YORK LIFE INSURANCE COMPANY. } 18840.

Now, on this day, come parties herein, by attorney, and the motion of said defendant to retax costs herein being now taken up, the same is by the court sustained. The motion of defendant to modify judgment heretofore entered herein on April 14th, 1894, being now taken up and submitted to the court, the court, being fully advised, doth sustain said motion to modify said judg-
19 ment by striking from said judgment the following words, to wit, "with interest thereon from this day and all costs

herein incurred;" to which ruling of the court said plaintiff excepts. Wherefore the court orders that said judgment so rendered, as aforesaid, be now modified and corrected as follows, to wit:

Now, on this day, come parties herein, by attorney, and this cause having heretofore been submitted to the court upon the petition and evidence, and the court, being now fully advised in the premises, finds that said defendant is indebted unto said plaintiff in the sum of $2,670.00.

It is therefore ordered and adjudged by the court that plaintiff recover of and from defendant, New York Life Insurance Company, a corporation, the sum of twenty-six hundred and seventy ($2,670.00) dollars, and that defendant recover of plaintiff all costs herein incurred, and that execution issue in conformity herewith. Plaintiff's motion for a new trial of this cause being now taken up, the same is by the court overruled; to which ruling said plaintiff excepts. Plaintiff files herein affidavit for an appeal; which appeal is by the court allowed as prayed to the supreme court of the State of Missouri, and plaintiff is given until on or before the first day of the October term, 1894, of this court in which to file her bill of exceptions.

On the 8th day of October, 1894, of the circuit court of Jackson county, the following proceedings were had and made of record in the cause entitled—

FANNIE CRAVENS
vs.
NEW YORK LIFE INSURANCE CO. } 18840.

20 Comes now plaintiff, by attorney, and presents to the court her bill of exceptions; which said bill is by the court signed and sealed and ordered to be filed and made a part of the record herein, which is accordingly done.

Which said bill of exceptions is in the words and figures following, to wit:

In the Jackson Circuit Court, at Kansas City, Missouri, April Term, 1894.

FANNIE CRAVENS, Plaintiff,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Defendant.

Be it remembered that on the trial of this cause the following proceedings were had:

A jury was waived by the parties to this cause, plaintiff and defendant. The cause was submitted to the court and tried by the court without a jury upon the following agreed statement of facts and exhibits, to wit:

Agreed Statement of Facts.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that the same may be submitted to the

court for decision and judgment upon the issues therein made by the pleadings and the following agreed statement of facts, to wit:

1. That the defendant is a corporation organized and existing under the laws of the State of New York as a mutual life insurance company, without capital stock, having its chief office in the city of New York, and was at the date of issuing the policy in question and since has been and now is engaged in the business of insuring lives through branch offices in the different States and Territories of this country and certain foreign countries.

21 A copy of the charter of the defendant is herewith filed as Exhibit "A" and made a part hereof as fully as if set forth herein.

2. That the defendant for many years past has maintained branch offices in the State of Missouri, and has employed agents to solicit applications for insurance from citizens of Missouri, and in the year 1887, as both prior and subsequent thereto, defendant had received from the superintendent of insurance a certificate of authority to transact business in said State, which certificate is herewith filed as "Exhibit B" and made a part hereof as fully as if set forth herein.

3. That during the year 1886 and prior to the issuance of the policy sued upon the amount of policies issued by defendant to citizens of Missouri was $1.617,985.00, and the amount of insurance in force on the lives of citizens of Missouri on December 31st, 1886, was $8,886,542.00, and the total amount of policies issued by defendant in said years 1886 was $85,178,294.00, and the total amount of policies in force on December 31st, 1886, issued by defendant was $304,373,540.00.

4. That on the 2nd day of May, 1887, and long prior thereto John K. Cravens was a citizen of the State of Missouri and resident of the county of Jackson, in said State; that on the said date and long prior thereto said John K. Cravens was the husband of Fannie Cravens, the plaintiff herein, and thereafter continued to be the husband of said plaintiff, Fannie Cravens, until the time of his death.

5. That the defendant in the transaction of its business *and* adopted different forms of policies, embodying different and varying plans of insurance, all of them being on the mutual plan, the premiums paid, less the expense of management, being administered solely for the benefot of the policy-holders, defendant having no capital stock.

22 6. That on the 2nd day of May, 1887, the local agents of defendant solicited said John K. Cravens, at his residence, in the county of Jackson and State of Missouri, to insure his life in the defendant company, and submitted to him the different plans of insurance then in use by said defendant, and said John K. Cravens selected the plan known as the non-forfeiting, limited, tontine policy, 15-year endowment, with limited premium return, and signed a written application therefor, and also signed the same in the name of the plaintiff, Fannie Cravens, as beneficiary of the policy to be issued thereunder; which said application is herewith filed as "Exhibit C" and made a part hereof as fully as if set forth herein.

Said written application was thereupon delivered to defendant's agent at Kansas City and was by him forwarded with the report of the medical examination of said Cravens; which said medical examination of said Cravens was made by the examiner of defendant company at Kansas City, in the State of Missouri, and by said agent forwarded to defendant's home office, in the city of New York.

7. That thereafter, on the tenth day of May, 1887, said application and medical examination was received at the home office of the defendant, in the city of New York, State of New York, and was there examined by the officers of defendant, and on the eleventh day of May said application and medical examination was accepted and approved, and the policy in suit, No. 250,213, was thereupon executed by the officers of said defendant at said home office; which said policy is herewith filed and marked "Exhibit D" and made a part hereof as fully as if set forth herein.

8. That said policy was transmitted by defendant to its agents at Kansas City, in Jackson county, and on the 20th day of May, 1887, the policy was delivered to said Cravens in the county of Jackson, in the State of Missouri, by said agent, and the first premium
23 of $589.50 was paid by said Cravens in the State of Missouri to the said agent of defendant and by said agent transmitted to defendant's home office.

9. That said Cravens thereafter paid to defendant the premiums due upon said policy upon the 11th day of May, 1888, and on the 11th day of May, 1889, and on the 11th day of May, 1890, the amount of each of said premiums being received by the agent of the defendant from said Cravens at defendant's branch office in Kansas City and transmitted to defendant's home office, said agent delivering therefor to said Cravens receipts of defendant signed by the chief officers of the company and countersigned by said agent.

10. That default was made in the payment of the premium due on the 11th day of May, 1891, and said premium has not been paid and no subsequent premium has been paid.

11. That said John K. Cravens died in Kansas City, in the State of Missouri, on the second day of November, 1892, and thereafter, on the 30th day of November, 1892, proofs of death in due form, as called for by the policy of insurance, were by Fannie Cravens made out and delivered to defendant and received by defendant. A copy of said proofs of death is herewith filed and marked "Exhibit E" and made a part hereof as fully as if set forth herein.

12. That the amount of paid-up insurance to which the policy in suit, No. 250,213, was entitled, according to the terms of the application and policy, was $2,670; that no demand for such paid-up policy was made by or on behalf of said Cravens within six months after default, on May 11th, 1891, or at any time; that defendant, upon the death of said Cravens, offered to waive the failure to make such demand, and tendered plaintiff and still tenders the amount of said paid-up policy, to wit, $2,670, which she declined and still declines to receive.

13. At the date of the issuance of said policy the only statute of

the State of New York regulating or in any way relating to
24 the forfeiture of life-insurance policies is that set forth in chapter 341 of the Laws of 1876 of the State of New York as amended by chapter 321 of the Laws of 1877 of the said State; which said statutes may be referred to as set forth in full herein.

14. That the total number of policies issued during the year 1887 by defendant on the "non-forfeiting limited tontine policy plan, with fifteen-year tontine period," constituting the same tontine class with policy No. 250,213, issued to the residents of all States and countries wherein defendant did business, was five thousand one hundred and seventy-two (5,172), covering aggregate insurance of the sum of $20,154,981.00.

15. That said John K. Cravens, on the 11th day of May, 1891, was fifty-three years of age, and the term of temporary insurance procured at that date by three-fourths of the net value of the policy taken as a single premium for the amount written in the policy was six years and forty-six days from the 11th day of May, 1891, making said policy, if subject to said extended insurance, in force at the date of the death of the said Cravens.

16. The amount which plaintiff claims under said policy is the face of the policy, to wit, $10,000, less the amount of unpaid premiums, with interest thereon, leaving a balance of $8,749.21, with interest thereon, at the rate of six per cent. per annum, from the 30th day of November, 1892, and the defendant admits and offers to pay the aforementioned sum of $2,670, which the plaintiff declines to receive.

17. That since the first day of January, 1879, the following-named foreign corporations have maintained and now maintain offices and agents in the State of Missouri and conduct in said State the business of insuring human lives for a money consideration, to
wit, the Mutual Life Insurance Company of New York; the
25 New England Life Insurance Company of Boston, Mass.; the Penn Mutual of Philadelphia, the Connecticut Mutual of Hartford, Conn.; the Equitable Life Assurance Society of New York.

18. That the Equitable Life Assurance Society of New York is a corporation organized under the general insurance laws of New York, passed June 24th, 1853, and under the charter granted thereunder, a copy whereof is hereto attached as "Exhibit F," and said society in the transaction of its business of insuring human lives issues different forms of policies, embodying different and varying plans of insurance on the mutual plan, for the benefit of the policy-holders, subject to the expense of management and the rights of stockholders, as set forth in said charter, and that said Equitable Life Assurance Society since the first day of January, 1879, has been and now is engaged in the business of insuring human lives through branch offices situated in the different States and Territories of this country.

19. The parties hereto shall be entitled to object to the admission of any one or more of the foregoing facts in evidence on the ground of irrelevancy or immateriality, provided that such objection shall be made in writing at the time of arguing or submitting the case

upon briefs, and to save exceptions to the ruling of the court thereon with the same effect as if evidence of such facts were offered at the trial.

WILLIAM B. C. BROWN AND
KARNES, HOLMES & KRAUTHOFF,
Attorneys for Plaintiff.
JUDSON & TAUSSIG, *For Defendant.*

EXHIBIT D.

No. 250,213. Amount, $10,000.

26

Age, 49.

Annual premium, $589.50.

Examined.

Wife's policy.

Limited-payment life.

Non-forfeiting tontine policy.

N. 86–37.

27

The New York Life Insurance Company, by this policy of insurance, in consideration of the agreements, statement-, representations and warranties submitted to its officers at the home office in the city of New York, in the written application for this policy, which are hereby referred to and made a part of this contract, and in further consideration of the sum of five hundred and eighty-nine dollars and fifty cents, to them in hand paid, at the office of the company in the city of New York, by the assured under this policy, to wit:

Fanny Cravens, wife of John K. Cravens, and of the annual payment of five hundred and eighty-nine dollars and fifty cents, to be made at said office on or before the eleventh day of May in every year during the continuance of this policy, until fifteen full years' premiums shall have been paid, doth insure the life of John K. Cravens, lawyer, of Kansas City, in the county of Jackson, State of Missouri (hereinafter called the insured) in the amount of ten thousand dollars, commencing on the eleventh day of May, 1887, at noon.

And the said company doth hereby promise and agree to pay the amount of the said insurance at its office in the city of New York to the said assured, for her sole use, if living, in conformity with the statute, and if not living to the children of said Fanny Cravens or their guardian for their use, or if there be no such children surviving, then to the executors, administrators or assigns of the said insured, upon receipt and approval at said office of proofs, as hereinafter required, of the death, during the continuance of this policy, of the said insured, deducting therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid.

This policy is issued and accepted upon the following express conditions and agreements:

First. That if the premiums are not paid, as hereinafter provided, on or before the days when due, then this policy shall become void, and all payments previously made shall be forfeited to the company, except that if this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a paid-up policy will be issued on demand within six months after such lapse with the surrender of this policy, under the same conditions as this policy except as to payments of premiums, but without participation in profits, for an amount equal to as many fifteenth parts of the sum above insured as there shall have been complete annual premiums paid hereon when said default in the payment of premium shall be made; and all right, claim or interest arising under statute, or otherwise, to or in any other paid-up policy or surrender value, and to or in any temporary insurance, whether required or provided for by the statute of any State, or not, is hereby expressly waived and relinquished.

Second. That the provisions, requirements and
28 benefits, printed or written by the company upon the next page of this policy, are a part of this contract, as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof, the New York Life Insurance Company has by its president and vice-president, or actuary, signed and delivered this contract, this eleventh day of May one thousand eight hundred and eighty-seven.

WM. H. BEERS, *President.*

A. H. WELCH,
Actuary, 2d Vice-Pres't.

Provisions and Requirements Referred to in This Policy.

Non-forfeiting limited tontine policy provision.

This policy is issued on the non-forfeiting limited tontine policy plan, the particulars of which are as follows:

That the tontine dividend period for this policy shall be completed on the 11th day of May, in the year nineteen hundred and two.

That no dividend shall be allowed or paid upon this policy unless the person whose life is hereby insured shall survive until completion of its tontine dividend period, and unless this policy shall then be in force.

That surplus or profits derived from such policies on the non-forfeiting limited tontine policy plan as shall not be in force at the

date of the completion of their respective tontine dividend periods, shall be apportioned among such policies as shall complete their tontine dividend periods.

That after the completion of the tontine dividend period, provided this policy shall not have previously terminated, this policy shall secure to the person whose life is hereby insured one of the following benefits:

First. To apply the accumulated dividend to the purchase of an annuity on the said person whose life is hereby insured in one of the following forms: A. An annuity for the number of years that premiums are payable beyond the tontine period, to be used in reduction of the subsequent premiums on this policy, and in case the amount accruing in any year from the annuity, together with dividends that may thereafter be declared on this policy, shall exceed the amount of premium due thereon, the excess to be paid in cash; or, B, if the payment of premium is completed, an annuity for the whole term of life.

Second. To continue the policy for the original amount and withdraw the accumulated surplus apportioned by the company to this policy in cash.

Third. To withdraw in cash the entire equity (that is, the net reserve computed by the American table of mortality and interest at four and one-half per cent., and in addition thereto the accumulated surplus aforesaid.

Fourth. To convert the entire equity into a paid-up policy without participation in profits, for an amount to be determined by the method then in use by the company in determining paid-up policies of this class; provided that, should the amount of such paid-up policy exceed the original amount of the insurance, it is made a condition precedent to its issue:

1st. That a medical examination of the party whose life is hereby insured, made by an approved examiner upon a blank provided by the company for that purpose, is furnished by the applicant at his own expense.

2nd. That such a medical examination is approved by the medical board at the home office of the company, and the risk is recommended by them; and,

3rd. That this policy is legally surrendered during the lifetime of the insured, and within ninety days from the termination of the tontine dividend period.

Fifth. The conversion of the entire equity into a life annuity, upon the life of and payable to the said person whose life is hereby insured. These benefits are at the option of the person whose life is hereby insured, but it is understood and agreed that not less than three months prior to the termination of the tontine period the said person whose life is hereby insured shall notify the company, in writing, which benefit is selected, and if no such notification shall be received, then, and in that case, the accumulated surplus shall be applied to the purchase of an annuity in one of the forms stipulated in the "first benefit" named above.

That in the payment of premiums upon this policy, falling due

within the selected tontine period, a grace shall be allowed of one month; provided that in all cases when this grace is availed of, a fine at the rate of ten per cent. per annum shall be paid to the company for the time deferred.

Limit of travel and residence—Occupation and employments—Dueling, violation of law, etc.

If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edward's island, or Newfoundland); or, between the first day of July and the first day of November, south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic coast; thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a southwesterly direction *containing* one hundred miles from said coast to the thirty-fourth parallel of latitude; thence westerly along said parallel to the westerly border of Alabama (excepting the city of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly border of Ala-
31 bama and along the Tennessee river to the northerly boundary of Tennessee; thence westerly along the nor*ht*erly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific ocean; or, shall enter upon a voyage upon the high seas (except as hereinafter specified); or, shall be personally engaged in blasting, mining, submarine operations, areonautic travel or excursions, or the manufacture or transportation of highly imflammable or explosive substances; or in working or managing a steam-engine in any capacity; or, as a mariner, engineer, fireman, conductor, express messenger, or laborer in any capacity upon service on any sea, inlet, sound, river, lake or railroad; or shall enter any military or naval or paid fire department service whatsoever (the malitia, when not in actual service, excepted), without the consent of this company in each or either of the foregoing cases previously given in writing; or, if he shall die in or in consequence of a duel, or the violation of the laws of any nation, State or province; or, if death shall be caused by or in consequence of the use of intoxicating drink, opium, or other narcotics; or, if the first premium herein shall not have been actually paid during the continuance of the life in the same condition of health as described in the application; or, if any of the statements or representations made in the application for this policy shall be found in any respect untrue; then, and in every such case, this policy shall be null and void, and all payments previously made shall be forfeited to the company, and no action or right of action shall remain to, or be maintained against the company, by the assured or any other person by virtue of this policy.

Traveling Privileges.

The person whose life is hereby insured has permission to pass as passenger, by direct route, in first-class vessels, as fol-
32 lows:

1st. To and from Europe, travel and residence wherein is hereby permitted; 2nd, to and from California, and along the coast of Nova Scotia, New Brunswick, and the United States, between Cape Canso and the Rio Grande (provided no port is entered in which residence, at the time of such entrance, is prohibited); 3rd, between ports on the east Pacific coast, north of 32 degrees of north latitude; 4th, between ports on the east Pacific coast, north of 32 degrees of north latitude, and ports in the Sandwich islands, China and Japan.

Statements, etc., in the Application.

Inasmuch as only the officers of the home office of the company in the city of New York have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations made in the application for this policy, it is expressly understood and agreed that no information, statements or representations made or given by or to any other person soliciting or taking the application for this policy, or by or to any other person, shall be binding on the company, or in any manner effect its rights, unless such information, statements, or representations have been reduced to writing, and presented to the officers of the company at the home office, in the application referred to.

Powers of Agents.

No agent has power in behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to waive any forfeiture, to issue a permit for residence, travel or occupation, or to bind the company by making any promise or receiving any representation or information. This power can be exercised only by the president, vice-president or actuary of the company, and will not be delegated.

Payment of Premises.

All premiums are due and payable at the home office of
33 the company unless otherwise agreed in writing, but may be paid to agents producing receipts signed by the president, vice-president or actuary, and countersigned by such agents. Notice that each and every payment of premium is due at the date named in the policy if given and accepted by the delivery and acceptance of this policy, and any further notice required by any statute is hereby expressly waived. The giving of any other notice or the acceptance of any premium after it is due, *it* is to be considered as an act of courtesy only, and shall not be deemed as establishing a custom, or as waiving or disturbing any of the conditions as to payments of premiums thereafter due.

Dividends.

In case the cash value of any dividend that may be declared to this policy is allowed, the receipt therefor of the person whose life is hereby insured shall be a valid release to the company.

Proofs of Death.

Proofs of death under this policy shall be furnished to the company at its office in the city of New York within one year after death, and shall include sworn statements on the company's forms, as follows:

(1) A statement of each claimant; (2) a statement of each physician who attended the deceased within a year before death; (3) a statement from a responsible householder who knew the deceased; (4) a statement from the undertaker; (5) a statement from the clergyman, whenever one officiates. All questions must be fully answered, and the omission of any of the answers or statements required must be satisfactorily explained or supplied by other proofs.

Assignments.

This policy is not assignable.

EXHIBIT C.

34 *Abstract (E. & O. E) of the Application for Insurance in the New York Life Insurance Company.*

Policy No. 250,213.

* * * * * * *

1. Name (in full) of the party on whose life insurance is applied for. John K. Cravens.

2. A. Present residence. Kansas City, county of Jackson, State of Missouri. B. Post-office address. No. 22 Underwriters' Exchange, Kansas City, Missouri.

3. Occupation or employment; if more than one, state all. Lawyer.

NOTE.—In giving the occupation of the party it is not sufficient to state (for example) that he is a merchant, mechanic, or clerk, but the particular branch of business or trade must be specified, and full particulars given where the occupation is in any way hazardous.

4. How long has the party been engaged in the present occupation? 25 years.

B. Is the party married? Yes.

5. A. Place of birth. Indiana.

B. Race or nationality. White.

C. Born on the 14 day of August, 1838; age, nearest birthday, 49.

6. A. Are the habits of the party at the present time and have they always been sober and temperate? Yes.

B. To what extent does the party use intoxicating drinks as a beverage? Occasionally.

C. Is the party now or has he ever been engaged in any way in the retailing of alcoholic liquors? No.

7. A. Is the party now insured in this company or has he ever been? No.

B. If so, state the numbers of policies and amounts. ——.

35 8. A. Has the party any other insurance on his life?

B. If so, state in what companies, when taken, the kinds of policies, and their respective amounts.

A. B. Equitable, $10,000; Mutual Life, $2,500; New England, $3,000; assessment, $22,500.

9. A. Has any proposal or application to insure the life of the party ever been made to any company or agent upon which a policy has not been issued, or upon which a policy has been issued at a higher rate than that applied for? No.

B. If so, state full particulars, to what company, when, &c. ——.

10. Where has the party resided (during the summer and winter) during each of the last ten years? Kansas City.

11. Name of an intimate friend. L. K. Thacher.

B. His P. O. address. Kansas City.

12. Sum to be insured. $10,000.

Premiums, how payable—annually, semi-annually, or quarterly? On what table? Life, 15 premium.

13. Name in full, residence, and occupation of the party to whom the insurance applied for is to be payable in the event of death, and relationship to the party on whose life the insurance is applied for? Fanny Cravens, wife.

14. If the insurance is to be for the benefit of the wife, state whether in the event of her death before that of the insured it is to be payable to her executors, administrators, or assigns, or whether it is to revert to the insured or to revert to children? State whether her children, his children, or children by her are meant. Her children.

NOTE.—In view of legal difficulties, the company cannot recognize any assignment of a policy written in favor of wife with reversion to children; nor can it place a cash surrender value on such a policy while in force (except at the end of the tontine

36 period).

15. If the application is for and endowment policy, to whom is the endowment to be payable at its maturity?

NOTE.—This question refers only to policies issued on the endowment premium tables; not to policies issued on any life table (even if tontine).

16. Is a policy desirable on the "non-forfeiting limited tontine policy" plan, as set forth in that policy form? (Yes or no.) Yes.

B. If so, is the tontine period to be ten, fifteen, or twenty years?

B. The tontine period is to be fifteen years.

17. Any policy issued under this application will contain an agreement that—

If it shall lapse or become forfeited for the non-payment of any premium after being in force three full years, a paid-up policy will be issued on demand made within six months after such lapse, with surrender of the policy, under the same conditions as this policy,

except as to payments of premiums, but without participation in profits, for such an amount as the net reserve on the policy at the time of lapse, *for such an amount as the net reserve on the policy at the time of lapse*, computed by American table of mortality, and interest at four and one-half per cent., after deducting all indebtedness to the company, will purchase as a single premium at the present published rates of the company at the age of the insured at the time of lapse, if an ordinary life policy, or for such an amount as shall be represented by as many proportional parts of the sum insured as there shall have been complete annual premiums paid thereon when the lapse or default above referred to shall first be made if a limited-payment life policy or an endowment policy.

In consideration of this agreement, is all right, claim, or interest to or in any temporary insurance, surrender value, or other
37 paid-up policy, whether required or provided for by the statute of any State or not, specifically waived and relinquished? Yes.

NOTE.—An affirmative answer to this question is a necessary condition to the issue of the policy.

I do hereby declare that the person above named, on whose life insurance is applied for, is now in good health, and does ordinarily enjoy good health, and that in the above application I have not withheld any circumstance or information touching the past or present state of health or habits of life of said person with which the New York Life Insurance Company ought to be made acquainted (and that I have an interest in the life of the said person to the full amount of the sum hereby applied for). And I do hereby agree as follows:

1. That the statements and representations contained in the foregoing application and declaration, together with those made to the medical examiner by the person above named, on whose life insurance is applied for, shall be the basis of the contract between me and the said company; that I hereby warrant the same to be full, complete, and true, whether written by my own hand or not, and if the same or any of them are in any respect untrue the policy which may be issued hereon shall be void, and all moneys which may have been paid on account of such insurance shall be forfeited to said company.

2. That inasmuch as only the officers of the home office of the company in the city of New York have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, no statements, representations, or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations,
38 or information be reduced to writing and presented to the officers of the company at the home office in the application and declaration above referred to.

3. That in any distribution of surplus the principles and methods

which may be adopted by the company for such distribution and its determination of the amount equitably belonging to any policy which may be issued under this application shall be, and are hereby ratified and accepted by and for every person who shall have or claim any interest under the contract now proposed.

4. That under no circumstances shall the policy hereby applied for be in force until the actual payment to and acceptance of the premium by the company or its authorized agent during the lifetime and good health of the person on whose life insurance is applied for.

5. That the whole or any part of the risk herein proposed may be reinsured.

6. That the entire contract contained in the said policy and in this application, taken together, shall be construed and interpreted as a whole and in each of its parts and obligations according to the laws of the State of New York, the place of the contract being expressly agreed to be the principal office of the said company, in the city of New York, and, unless otherwise mutually agreed in writing, no suit shall be brought against the company upon this policy except in the courts of that State or in the circuit or district courts of the United States, nor shall any such suit be brought after the lapse of one year from the time when the cause of action accrues.

Dated at Kansas City this 2nd day of May, 1887.

Signature of the party or parties for whose benefit the insurance is to be effected. (Write the names in full.)

FANNY CRAVENS,
By JOHN K. CRAVENS.

Witness:

39 —— ——, *Agent.*

86–23.

NOTE.—In case of husband and wife or parent and children the former may sign for the latter, thus:

MARY SMITH,
By JOHN SMITH.

Signature of the party on whose life insurance is applied for. (Write the names in full.)

JOHN K. CRAVENS.

These blanks must be filled up by the medical examiner and in his own handwriting:

Declarations Made to the Medical Examiner of the New York Life Insurance Company.

The applicant for insurance must answer the following questions, which will be asked him by the medical examiner. The answers form an essential part of the contract.

1. Have you had since childhood any of the following complaints:

Answer (yes or no) opposite each.

Apoplexy. No. Asthma. No. Bilious colic. No.

Bronchitis. No. Cancer. No. Dropsey. No.

Disease of the brain. No. Disease of heart. No. Disease of kidney-. No. Disease of liver. No.

Disease of lungs. No. Disease of urinary organs. No.

Fistula. No. Fits or convulsions. No. General debility. No.

Gout. No. Insanity. No. Jaundice. No. Palpitation. No.

Paralysis. No. Piles. No. Pleurisy. No. Pneumonia. No.

Rheumatism. No. Rupture. No. Scrofula. No. Smallpox. Yes.

Skin disease. No. Spinal disease. No. Spitting or raising blood. No. Syphilis. No. Yellow fever. No.

Give full particulars of any illness you may have had since childhood. Had smallpox in 1871. Had typhoid fever in 1876; was sick some four or five weeks.

40 When were you last confined to the house by illness? In 1876; typhoid fever.

2. Have you ever had severe headaches, vertigo, fits, or any nervous or muscular trouble? No.

3. A. Are you subject to cough, expectoration, palpitation, or difficulty in breathing? No.

B. Have you ever been? If so, to which, when, and full details. No.

4. Are you subject or predisposed to dyspepsia, dysentery, or diarrhœa? No.

5. Have you ever met with any accidental or serious personal injury?

A. No.

6. Have you ever been seriously ill; if so, when, with what, and who was the medical attendant (state his name and residence)? Yes. Smallpox, in 1871; Dr. Porter, K. C.; typhoid fever, in 1876; Dr. Schauffler, K. C.

7. A. Name and residence of your usual medical attendant.

B. When and for what have his services been required? No regular attendant, only as above stated.

8. Have you consulted any other medical man; if so, when and for what? No.

9. Has any proposal or application to insure you- life ever been made to any company or agent upon which a policy has not been issued? If so, state full particulars. No.

10. Has any physician given an unfavorable opinion upon your life with reference to life insurance? If so, state particulars. No.

11. The medical examiner will please obtain from the party answers in full detail to the following queries. (In giving cause of death avoid all indefinite terms, as "general debility," "change of life," "fever," "dropsy," "exposure," or "accident." If the

41 word "childbirth" is used, state how long after the delivery death occurred, and whether there were any symptoms of disease of the lungs.)

Age, if living.	Condition of health.	Age at death.	Cause of death.	How long ill.	Previous health.
Father		74	Old age	Short time.	Good.
Mother, 85	Good				
5 brothers 58	Good				
5 brothers 54					
5 brothers 43					
5 brothers		About 50	Apoplexy.	Few hours.	Good.
5 brothers		Infancy			
2 sisters		About 30	Facts unknown.		Good.
Father's father		75	Old age	Sh'rt time.	Good.
Father's mother		94	Old age	Sh'rt time.	Good.
Mother's father		Don't know.	Drowned.		Good.
Mother's mother		Don't know.	Drowned.		Don't know.

12. Has either of your parents, brothers, sisters, grandparents, uncles, or aunts now or ever had consumption, cancer, gout, scrofula, diabetes, rheumatism, epilepsy, insanity, or other hereditary disease? No.

B. If so, give full particulars of each case.

I hereby declare that I am the party described in the accompanying application signed by me, and that I have given true answers to all the questions put to me by the medical examiner, which questions and answers are considered as an essential part of the application, and as forming with it the basis of the proposed contract of insurance.

To be signed by the party whose life is proposed for insurance.

JOHN K. CRAVENS.

Signed before me this 6th day of May, 1887.

CHARLES H. LESTER, M. D.,
Medical Examiner.

86–24.

42 Received from the New York Life Insurance Company — dollars, as per memorandum below, in full for all claims and demands under this policy, on the life of —— ——, and which is hereby surrendered to the company for cancellation.

$—.

On the back of the policy the following appears:

No. 250,213.

New York Life Insurance Company.

Assurance on the life of John K. Cravens.

Amount, $10,000.

For the information of the assured, and in order that any unintentional errors or omissions which hereafter may be found to exist may be corrected, an abstract of the application upon which this policy is based may be found on the third page within.

If corrections are desired, when satisfactory to the company, a certificate to that effect will be issued over the signature of the president or actuary.

D. M. HALBURT & SON, *Agent.*

This was all the evidence offered.

Whereupon plaintiff then and there at the time objected in writing to paragraphs five (5), twelve (12), thirteen (13), fourteen (14), and the following words contained in paragraph one (1), "as a mutual life insurance company without capital stock," contained in the agreed statement of facts hereinbefore set out, on the ground of irrelevancy to the issues in this cause; which objection was by the court overruled; to which action of the court in overruling said objection plaintiff then and there at the time excepted.

Whereupon the court found the issue for the defendant and gave judgment for the plaintiff in the sum of two thousand six hundred and seventy dollars ($2,670.00), and upon the seventeenth
43 day of April, 1894, and within four days after said finding and judgment and at the same term of court plaintiff filed her motion for a new trial as follows, to wit:

Comes now Fannie Cravens, plaintiff in the above-entitled cause, and files this her motion for new trial for the reasons that:

First. The finding and judgment of the court were contrary to the facts.

Second. The finding and judgment of the court are contrary to law.

Third. The finding and judgment of the court upon the agreed statement of facts should have been in favor of the plaintiff in the sum of nine thousand four hundred and thirty-two dollars and thirty-three cents ($9,432.33)—that is to say, the sum of $8,749.21, with interest thereon, at the rate of six per cent. per annum, from the 30th day of November, 1892.

Fourth. The court erred in considering improper evidence objected to by the plaintiff.

Which said motion was by the court, on the 23rd day of June, 1894, overruled; to which ruling and order of the court plaintiff then and there at the time excepted.

Upon the seventh day of June, 1894, the defendant filed in said cause its motion to retax costs as follows, to wit:

Now comes said defendant and moves the court to retax costs in said cause for the reason that judgment was rendered in favor of the plaintiff for costs, whereas judgment should have been rendered in favor of the defendant for costs, it having been admitted on the trial of said cause that defendant had tendered the plaintiff prior to the commencement of suit and has at all times been
44 ready and willing to pay to the plaintiff the amount for which judgment was rendered in said cause. Defendant therefore asks that costs of said suit be taxed against plaintiff.

Which said motion was by the court, on the 23rd day of June, 1894, sustained; to which ruling and order of the court the plaintiff then and there at the time excepted.

Plaintiff therefore prays the court to allow and sign this bill of exceptions, and that the same may be signed, sealed, and made a part of the record in this cause, which is accordingly done this 8th day of October, 1894.

J. H. SLOVER, [SEAL.]
Judge of the Circuit Court of Jackson County, Missouri, Division No. 2.

STATE OF MISSOURI, } ss:
County of Jackson, }

I, Morris E. Jones, official stenographer of the circuit court of Jackson county, Missouri (for division No. 2 thereof), do certify that the foregoing is a full, true, and complete copy of the bill of exceptions in cause numbered 18840, entitled Fannie Cravens *vs.* The New York Life Insurance Company, as the same now remains on file in the office of the clerk of said court.

In witness whereof I have hereunto set my hand this 8th day of October, 1894.

MORRIS E. JONES,
Official Stenographer.

STATE OF MISSOURI, } ss:
County of Jackson, }

45 I, H. H. Noland, clerk of the circuit court of Jackson county, State of Missouri, do hereby certify that the foregoing is a full and complete transcript of the cause wherein Fannie Cravens is plaintiff and The New York Life Insurance Company, a corporation, is defendant, as fully as the same appears of record and on file in my office, and that a copy of the bill of exceptions, as furnished by the official stenographer of this court, is inserted herein.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at office, in Kansas City, Missouri, this 17th day of October, A. D. 1894.

[SEAL.]

H. H. NOLAND, *Clerk,*
By D. M. McCLANAHAN, *D. C.*

46 And afterwards, to wit, on the 23rd day of October, 1896, the following proceedings were had in said cause in division No. 1 of said court, to wit:

FANNIE CRAVENS, App., }
vs.
N. Y. LIFE INS. CO., Resp. }

Come now the said parties, by attorneys, and after argument herein submit these cases to the court.

And afterwards, to wit, on the 1st day of April, 1898, the further following proceedings were had in said cause, viz:

FANNIE CRAVENS, App.,
vs.
N. Y. LIFE INS. Co., Resp.

Now, at this day, upon the court's own motion, it is ordered that these causes be transferred to the court in banc and set for hearing May 4, 1898.

And afterwards, to wit, on the 4th day of May, 1898, the following proceedings were had in said cause in court in banc, viz:

FANNIE CRAVENS, App.,
vs.
N. Y. LIFE INS. Co., Resp.

Come now the said parties, by attorneys, and after argument herein submit these causes to the court.

And afterwards, to wit, on the 21st day of February, 1899, the further following proceedings were had in said cause, viz:

FANNIE CRAVENS, Appellant,
vs.
THE NEW YORK LIFE INSURANCE Company, Respondent, a Corporation. } Appeal from Jackson County Circuit Court.

47 Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Jackson county circuit court rendered, be reversed, annulled, and for naught held and esteemed, and that the said appellant be restored to all things which she has lost by reason of the said judgment. It is further considered and adjudged by the court that the said cause be remanded to the said Jackson county circuit court for further proceedings to be had therein, in conformity with the opinion of this court, herein delivered, and that the said appellant recover against the said respondent her costs and charges herein expended, and have therefor execution (opinion filed).

Which said opinion is in words and figures as follows, to wit:

48 In the Supreme Court of Missouri, in Banc, October Term, 1898.

FANNY CRAVENS, Appellant,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Respondent.

In banc.

This is a suit upon a policy of life insurance for ten thousand dollars issued by the defendant company upon the life of J. K. Cravens, deceased, in favor of the plaintiff, who was his wife. The

case was tried by the court, a jury being waived. There was judgment in favor of plaintiff in the sum of $2,670, from which, after an unsuccessful motion for a new trial, she appeals, claiming that she is entitled to recover the sum of $8,749.21—that is, the face of the policy, $10,000, less the two unpaid premiums which were due at the time of the death of the assured, together with interest thereon.

The petition alleges that the policy was issued on the 11th day of May, 1887; the payment of all annual premiums until May, 1891; the death of the assured on November 2, 1892; that under the statute the insurance was extended and was in force at the date of the death of the assured, and asks judgment for the amount of the policy, less the unpaid premiums.

The answer of defendant alleges that it is a mutual insurance company duly incorporated under the laws of the State of New York and doing business in this State; that by agreement of the parties the law of that State was made the law governing the contract; set up that the assured made default in May, 1891, after paying four annual premiums, and tendered the sum of $2,670.00, the amount of paid-up or commuted policy, to which the original policy was entitled by its terms on such default, waiving failure to make demand therefor. It also alleges that other policy-holders—that is, other members of the same tontine class—had, by the terms of their respective policies, acquired, with plaintiff, contingent and mutual interests in the profits and surplus to be derived from the premiums on all policies of such class, and that the company, on the faith
49 of plaintiff's contract, had incurred obligations to the other members of the tontine class, and that plaintiff is now estopped from setting up any other or different claim under the policy.

The answer further alleges that if the statute of Missouri relied on by plaintiff was construed so as to nullify the non-forfeiting agreement upon the faith of which the policy was issued and without which it would not have been issued, and to create and enforce an obligation contrary to the expressed intent of the parties, that then the statute so construed is repugnant to the constitution of Missouri and to the Constitution of the United States.

The application for the policy is made part of the contract and contains the following provisions:

"2. That inasmuch as only the officers of the office of the said company in the city of New York have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, no statements, representations, promises, or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on said company, or in any manner affect its right, unless such statements, representations, or information, be reduced to writing and presented to the officers of the company, at the home office in the application." * * *

4. That under no circumstances shall the policy hereby applied for be in force until the actual payment to and acceptance of the premium by the company or its authorized agent during the life-

time and good health of the person on whose life insurance is applied for.

6. That the entire contract contained in the said policy and in this application, taken together, shall be construed and interpreted as a whole and in each of its parts and obligations, according to the laws of the State of New York, the place of the contract being expressly agreed to be the principal office of the said com-
50 pany in the city of New York.

The policy contains this further provision:

That if the premiums are not paid, as hereinafter provided, on or before the days when due, then this policy shall become void, and all payments previously made shall be forfeited to the company, except that if this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a paid-up policy will be issued, on demand made within six months after such lapse with the surrender of this policy, under the same conditions as this policy except as to payments of premiums, but without participation in profits, for an amount equal to as many fifteenth parts of the sum above insured as there shall have been complete annual premiums paid hereon when said default in the payment of premiums shall be made; and all right, claim or interest arising under statute, or otherwise, to or in any other paid-up policy or surrender value, and to or in any temporary insurance, whether required or provided for by the statute of any State, or not, is hereby expressly waived and relinquished.

The cause was tried upon an agreed statement of facts, the material parts of which are as follows:

1. That the defendant is a corporation organized and existing under the laws of the State of New York as a mutual life insurance company, without capital stock, having its chief office in the city of New York, and was at the date of issuing the policy in question and since has been and now is engaged in the business of insuring lives through branch offices situated in the different States and Territories of this country and certain foreign countries.

2. That the defendant for many years past has maintained branch offices in the State of Missouri, and has employed agents to solicit applications for insurance from citizens of Missouri, and in the year 1887, as both prior and subsequent thereto, defendant had received from the superintendent of insurance a certificate of authority to transact business in said State.

51 3. That during the year 1886 and prior to the issuance of the policy sued upon the amount of policies issued by defendant to citizens of Missouri was $1,617,985.00, and the amount of insurance in force on the lives of citizens of Missouri on December 31, 1886, was $8,886,542.00, and the total amount of policies issued by defendant in said year 1886 was $85,178,294.00, and the total amount of policies in force on December 31, 1886, issued by defendant was $304,373,540.00.

4. That on the second day of May, 1887, and long prior thereto John K. Cravens was a citizens of the State of Missouri and resident of the county of Jackson, in said State; that on the said date and

long prior thereto said John K. Cravens was the husband of Fannie Cravens, the plaintiff herein, and thereafter continued to be the husband of said plaintiff, Fannie Cravens, until the time of his death.

5. That the defendant in the transaction of its business had adopted different forms of policies, embodying different and varying plans of insurance, all of them being on the mutual plan, the premiums paid, less the expense of management, being administered solely for the benefit of the policy-holders, defendant having no capital stock.

6. That on the second day of May, 1887, the local agents of defendant solicited said John K. Cravens, at his residence, in the county of Jackson and State of Missouri, to insure his life in the defendant company, and submitted to him the different plans of insurance then in use by said defendant, and said John K. Cravens selected the plan known as the non-forfeiting, limited tontine policy, fifteen-year endowment, with limited premium return, tontine, signed a written application therefor, and also signed the same in the name of the plaintiff, Fannie Cravens, as beneficiary of the policy to be issued thereunder; which said application is herewith filed * * * and made a part hereof as fully as if set forth herein. Said written application was thereupon delivered to defendant's agent at Kansas City, and was by him forwarded
52 with the report of the medical examination of said Cravens; which said medical examination of said Cravens was made by the examiner of defendant company at Kansas City, in the State of Missouri, and by said agent forwarded to defendant's home office, in the city of New York.

7. That thereafter, on the 10th day of May, 1887, said application and medical examination was received at the home office of the defendant, in the city of New York, State of New York, and was there examined by the officers of defendant, and on the 11th day of May said application and medical examination was accepted and approved, and the policy in suit, No. 250,213, was thereupon executed by the officers of said defendant at said home office; which said policy is herewith filed * * * and made a part hereof as fully as if set forth herein.

8. That said policy was transmitted by defendant to its agents at Kansas City, in Jackson county, and on the 20th day of May, 1887, the policy was delivered to said Cravens, in the county of Jackson, in the State of Missouri, by said agent, and the first premium of $589.50 was paid by said Cravens, in the State of Missouri, to the said agent of defendant and by said agent transmitted to defendant's home office.

9. That said Cravens thereafter paid to defendant the premiums due upon said policy upon the 11th day of May, 1888, and on the 11th day of May, 1889, and on the 11th day of May, 1890, the amount of each of said premiums being received by the agent of the defendant from said Cravens at defendant's branch office in Kansas City and transmitted to defendant's home office, said agent delivering there-

for to said Cravens receipts of defendant, signed by the chief officers of the company and countersigned by said agent.

10. That default was made in the payment of the premium due on the 11th day of May, 1891, and said premium has not been paid, and no subsequent premium has been paid.

53 11. That said John K. Cravens died in Kansas City, in the State of Missouri, on the second day of November, 1892, and thereafter, on the 30th day of November, 1892, proofs of death in due form, as called for by the policy of insurance, were by Fannie Cravens made out and delivered to defendant and received by defendant. A copy of said proofs of death is herewith filed * * * and made a part hereof as fully as if set forth herein.

12. That the amount of paid-up insurance to which the policy in suit, No. 250,213, was entitled according to the terms of the application and policy was $2,670; that no demand for such paid-up policy was made by or on behalf of said Cravens within six months after default, on May 11, 1891, or at any time; that defendant, upon the death of said Cravens, offered to waive the failure to make such demand, and tendered plaintiff and still tenders the amount of said policy, to wit, $2,670, which she declined and still declines to receive.

13. At the date of the issuance of said policy the only statute of the State of New York regulating or in any way relating to the forfeiture of life insurance is that set forth in chapter 341 of the Laws of 1876 of the State of New York as amended by chapter 321 of the Laws of 1877 of the said State; which said statutes may be referred to as if set forth in full herein.

14. The total number of policies issued during the year 1887 by defendant on the "non-forfeiting, limited tontine policy plan, with fifteen years' tontine period," constituting the same tontine class with policy No. 250,213, issued to the residents of all the States and countries wherein defendant did business, was five thousand one hundred and seventy-two (5,172), covering aggregate insurance in the sum of $20,154,981.00.

15. That said John K. Cravens on the 11th day of May, 1891, was fifty-three years of age, and the term of temporary insurance procured at that date by three-fourths of the net value of the policy taken as a single premium for the amount written in the policy was six years and forty-six days from the 11th day of May,

54 1891, making said policy, if subject to said extended insurance, in force at the date of the death of the said Cravens.

16. The amount which plaintiff claims under said policy is the face of the policy, to wit, $10,000, less the amount of unpaid premiums, with interest thereon, leaving a balance claimed of $8,749.21, with interest thereon, at the rate of six per cent. per annum, from the 30th day of November, 1892, and the defendant admits and offers to pay the aforementioned sum of $2,670, which the plaintiff declines to receive.

The several sections of the Revised Statutes of 1879 in force at the date of the policy sued on and having any bearing upon the issues involved are as follows:

"SECTION 5983. Policies non-forfeitable, when.—No policy of insurance on life hereafter issued by any life insurance company authorized to do business in this State, on and after the first day of August, A. D. 1879, shall, after payment upon it of two full annual premiums, be forfeited or become void by reason of the non-payment of premiums, thereon, but it shall be subject to the following rules of commutation, to wit: The net value of the policy when the premium become- due and is not paid shall be computed upon the American experience table of mortality, with four and one-half per cent. interest per annum, and after deducting from three-fourths of such net value any notes or other indebtedness to the company, given on account of past premium payments on said policy issued to the insured, which indebtedness shall then be cancelled, the balance shall be taken as a net single premium for temporary insurance for the full amount written in the policy; and the term for which such temporary insurance shall be in force shall be determined by the age of the person, whose life is insured at the time of default of premium, and the assumption of mortality and interest aforesaid, but if the policy shall be an endowment, payable at a certain time, or at death if it should occur previously then if what remains as aforesaid shall exceed the net single premium of temporary insurance for the remainder of the endowment term
55 for the full amount of the policy, such excess shall be considered as a net single premium, for a pure endowment of so much as such premium will purchase determined by the age of the insured at date of defaulting the payment of premium on the original policy, and the table of mortality and interest as aforesaid, which amount shall be paid at the end of the original term of endowment, if the insured shall then be alive.

"SEC. 5984. A paid-up policy may be demanded, when at any time after the payment of two or more full annual premiums and not later than sixty days from the beginning of the extended insurance provided in the proceding section the legal holder of the policy may demand of the company, and the company shall issue its paid-up policy, which in case of an ordinary life policy, shall be for such an amount as the net value of the original policy at the age and date of lapse, computed according to the American experience table of mortality, with interest at the rate of four and a half per cent. per annum, without deduction of indebtedness on account of said policy, will purchase, applied as a single premium upon the table rates of the company, and in case of a limited-payment life policy, or of a continued-payment endowment policy payable at a certain time, or death, it shall be for an amount bearing such proportion to the amount of the original policy as the number of complete annual premiums actually paid shall bear to the number of such premiums stipulated to be paid: Provided, that from such an amount the company shall have the right to deduct the net reversionary value of all indebtedness to the company on account of such policy; and, provided, further that the policy-holder shall, at the time of making demand for such paid-up policy, surrender the

original policy, legally discharged, at the parent office of the company.

"SEC. 5985. Rule of payment on commuted policy.—If the death of the insured occur within the term of temporary insurance covered by the value of the policy as determined in section 5983, and if no condition of the insurance other than the payment of
56 premiums shall have been violated by the insured, the company shall be bound to pay the amount of the policy, the same as if there had been no default in payment of premiums, anything in the policy to the contrary notwithstanding: Provided, however, that notice of the claim and proof of the death shall be submitted to the company in the same manner as provided by the terms of the policy, within ninety days after the decease of the insured; and, provided, also, that the company shall have the right to deduct from the amount insured in the policy the amount compounded at six per cent. interest per annum of all the premiums that had been forborne at the time of the decease, including the whole of the year's premium in which the death occurs, but such premiums shall in no case exceed the ordinary life premium for the age at issue, with interest as last aforesaid.

"SEC. 5986. The foregoing provisions not applicable, when.—The three preceding sections shall not be applicable in the following cases, to wit: If the policy shall contain a provision for an unconditional cash surrender value at least equal to the net single premium for the temporary insurance provided hereinbefore, or for the unconditional commutation of the policy to non-forfeitable paid-up insurance for which the net value shall be equal to that provided for in section 5984, or if the legal holder of the policy shall, within sixty days after default of premium, surrender the policy and accept from the company another form of policy, or if the policy shall be surrendered to the company for a consideration adequate in the judgment of the legal holder thereof, then, in any of the foregoing cases, this act shall not be applicable."

The plaintiff contends that the contract of insurance, which form the basis of this suit, is a Missouri contract and must be governed by its laws, notwithstanding the defendant is a corporation incorporated under the laws of the State of New York, has its chief office there, and that the contract provides that the contract con-
57 tained in the policy and application shall be construed according to the laws of the State of New York, the place of said contract being agreed to be the home office of said company in the city of New York. This contention is not only predicated of the fact that the contract also provides "that under no circumstances shall the policy hereby applied for be in force until the actual payment to and acceptance of the premiums by the company or its authorized agent during the lifetime and good health of the person on whose life insurance is applied for," but upon the further fact that the application was by defendant's agent in Kansas City, Missouri, transmitted to defendant at its home office in said city, upon receipt of which the company issued the policy containing the clause quoted, sent the same to its agent at Kansas City, who

afterwards delivered the policy to the insured in Missouri, and then and there received the first premium. However perfect in form the contract may have been, and although all of its other terms and conditions may have been complied with, payment of the premium during the life and good health of the assured and delivery of the contract to him were conditions precedent in order to complete its execution, and as if the premiums were paid and the policy delivered to the assured, in this State, it must follow that the contract was executed here.

Equitable Life Society *vs.* Clements, 140 U. S., 226, was a suit upon a life insurance policy executed in New York by a corporation of that State doing business in this State upon an application signed in this State by one of its residents and made part of the contract, which provided that it should not take effect until the first premium was actually paid during the life of the person proposed for insurance and which was delivered and the first premium paid in Missouri, and it was held, in the absence of evidence of the company's acceptance of the application in New York, to be a Missouri contract and governed by the laws of Missouri.

In Hicks *vs.* National Life Ins. Co., 60 Fed. Rep., 690, it is said:

"If any authority were needed for the proposition that a
58 policy applied for in New York, delivered there and the premiums paid there, is a New York contract, notwithstanding it is signed and issued by the insurer in another State, the reference is supplied by the case of Assur. Soc. *v.* Clements, 140 U. S., 226. The delivery of the policies in the present case was made in New York city to an agent of the assured and in legal effect was as if the assured had been personally present and received them. Then, and not before, the policies took effect."

In Northwestern Mut. Life Ins. Co. *v.* Elliott *et al.*, 5 Fed. Rep., 225, an application for a policy was made at Portland, Oregon, to the company's agent, who forwarded same to the company at Milwaukee, Wisconsin. The company thereupon, in Wisconsin, issued its policy containing a clause, viz:

"This policy shall not take effect and become binding on the company until the premium shall be actually paid during the lifetime of the person whose life is assured to the company or some person authorized to receive it, who shall countersign the policy on receipt of the premium," and transmitted same to its agent at Portland, Oregon, who there delivered it to the insured.

The court said: "Where, then, was this contract made; in Wisconsin or Oregon? The answer to this question involves the inquiry where did the final act take place which made the transaction a contract binding on the parties?

"The premium was paid to the agent of the plaintiff at Portland, who then and there countersigned and delivered the policy. This was the consummation and completion of the contract. But, to put this beyond a doubt, the policy itself declares that it shall not be binding on the company until these acts are performed, and until it was binding on the company it was not binding on the applicant; in short, it was not yet a contract, but only a proposition."

Pomeroy *vs.* Manhattan Life Ins. Co., 40 Ills., 400; Thwing *vs.* Great Western Ins. Co., 111 Mass., 109; Wood F. Ins., 189, note 2; Hardie *v.* St. Louis Mut. Life Ins. Co., 26 La. Ann., 242; St. Louis Mut. Life Ins. Co. *vs.* Kennedy, 6 Bush., 450.

59 In Fletcher *vs.* New York Life Ins. Co., 13 Fed. Rep., 526, the policy was delivered in Missouri to a citizen of Missouri and the first premium there paid. The court said:

"The defendant company was doing business in Missouri with the privileges granted to it here when said insurance was effected. It may be that the formal acceptance of the proposed contract was by the letter of the contract to be consummated in New York. The broad proposition, however, remains, no artifice to avoid which can be upheld. The statutes of Missouri, for salutary reasons, permit foreign corporations to do business in the State on prescribed conditions. If, despite such conditions, they can by the insertion of clauses in their policies withdraw themselves from the limitations of the Missouri statutes while obtaining all the advantages of its license, then a foreign corporation can by special contract upset the statutes of the State and become exempt from the requirements of law. Such a proposition is not to be countenanced. If the defendant corporation chose to embark in business within this State under the terms and conditions named in the statute, it could not by paper contrivances, however specious, withdraw itself from the operation of the laws by force of which it could alone do business within the State. To hold otherwise would be subversive of the right of the State to decide on what terms by comity a foreign corporation should be permitted to do business or be recognized therefor within the State jurisdiction. Each State can decide for itself whether a foreign corporation shall be recognized and on what terms. Primarily, a corporation has no existence beyond the territorial limits of the State creating it, and when it does undertake business beyond it does so only by comity. The defendant corpotion, having been permitted to do business in Missouri under the statutes of the latter, was bound by all the provisions of those statutes, and could not, by the insertion of any of the many clauses in its forms of application, etc., withdraw itself from the obli-

60 gatory force of the statute. The contract of insurance is, therefore, a Missouri contract and subject to the local law."

In the case of Wall *vs.* Equitable Life Assur. Soc., 32 Fed. Reporter, 273, it was said:

"The defendant is a New York corporation doing business in the State of Missouri. The insured was a citizen and resident of Missouri and made his application here, which was forwarded to New York; the application was accepted, the policy fully prepared and signed in that State and sent to Missouri and delivered to the applicant here. By the terms of the policy all premiums are payable at the defendant's office in New York. If the sum insured should become payable, the payment is to be made at its office in New York. * * * Under these facts I have little doubt as to the true answer to be made to this first question, viz: 'Is the contract sued on governed and to be construed by the laws of the State

of New York or by the laws of the State of Missouri? In White *vs.* Insurance Company, 4 Dill., 177, it was held that the act of the legislature of the State of Missouri, March 23rd, 1874, in respect to policies of life insurance extends to all policies of life insurance delivered in this State after the act went into effect.' That was a suit against a foreign insurance company doing business in the State. In Fletcher *vs.* Ins. Co., 13 Fed. Rep., 526, it was held that a foreign insurance company cannot withdraw itself from the operation of the statute of a State in which it does business by insertion of clauses in its policies." That was a case in which the defendant company insisted that, by virtue of certain clauses in the application, the contract was to be finally and fully executed in New York. In his opinion, an opinion concurred in by Circuit Judge McCrary, Judge Treat uses this language:

"The defendant corporation, having been permitted to do business in Missouri under the statutes of the latter, was bound by all the provisions of those statutes, and could not, by the insertion of any of the many clauses of its forms of application, withdraw
61 itself from the obligatory force of the statute. The contract of insurance is, therefore, a Missouri contract and subject to the local law."

"In view of these authorities and considering the reasoning of Judge Treat in the opinion above referred to, I deem it unnecessary to discuss the question further and simply hold that the Missouri statute controls." Affirmed in Supreme Court U. S.

The same rule is announced in Equitable Life Soc. *vs.* Winning, 58 Fed. Rep., 541; Berry *vs.* Knights Templars and Masons' Life Indemnity Company, 46 Fed. Rep., 439, and in Price *vs.* The Connecticut Mutual Life Ins. Co., 48 Mo. App., 281.

It is true that there was no express provision in the contract which formed the basis of the Clements suit, *supra*, as there is in the case at bar, with respect to the State by whose laws the contract should be construed or as to the place of contract; but defendant was at the time of the execution of the contract doing business in this State *ex gratia* and could not with respect to such business evade the statute of this State or withdraw itself from its operation by the insertion of clauses in the policy. Fletcher *vs.* Ins. Co., *supra;* Wall *vs.* Equitable Life Assurance Co., *supra.*

In Price *vs.* Insurance Co., *supra*, it is said: "Where an insurance company does business in this State and issues its policies to residents of this State the validity of clauses in its policies must be determined by the laws of this State. The laws of this State establish a rule of public policy which overrides the freedom of contract of the parties and makes waiver of statutory provisions eneffectual, although such waivers are contained in the strongest terms in the policies."

Foreign insurance companies which do business in this State do so not by right, but by grace, and must in so doing conform to its laws; they cannot avail themselves of its benefits without
62 bearing its burdens; moreover, the State may prescribe conditions upon which it will permit a foreign insurance com-

pany to transact business within its borders or exclude them altogether, and in so doing violates no contractural rights of the company. State *vs.* Stone, 118 Mo., 388; Daggs *vs.* Ins. Co., 136 Mo., 382; same case, — U. S., —.

It is therefore concluded that the contract is a Missouri contract and governed by the laws of this State.

Being a Missouri contract, the statute then in force with respect to the subject-matter of the contract entered into and become part thereof as much as if copied therein. State, to use of Wolf, *vs.* Berning, 74 Mo., 84; Reed *vs.* Painter, 129 Mo. L. C., 680; Havens *vs.* Germania Fire Ins. Co., 123 Mo., 403; White *vs.* Ins. Co., 4 Dillon, 177.

The question, then, is, Could the parties themselves enter into a contract, either directly or indirectly, waiving the provisions of the statute?

It was held in Equitable Life Assurance Society *vs.* Clements, *supra*, that sections 5983, 5986, *supra*, established a rule of commutation upon default in payment of premiums after two premiums have been paid on a policy of life insurance, which could not be raised or waived by express provision in the contract except in the cases specified in those statutes. The court said:

"The manifest object of the statute, as of many statutes regulating the form of policies of insurance on lives or against fires is to prevent insurance companies from inserting — their policies conditions of forfeiture or restriction, except so far as the statute permits. The statute is not directory only or subject to be set aside by the company with the consent of the assured, but it is mandatory and controls the nature and terms of the contract into which the company may induce the assured to enter. This clearly appears from the unequivocal words of command and of prohibition above quoted, by which, in section 5983, 'no policy of insurance' issued by any life insurance company authorized to do business in
63 this State 'shall, after the payment of two full annual premiums, be forfeited or become void by reason of the nonpayment of premium thereon, but it shall be subject to the following rules of commutation,' and in section 5985, that if the assured dies within the term of temporary insurance, as determined in the former section, 'the company shall be bound to pay the amount of the policy,' 'anything in the policy to the contrary notwithstanding.' This construction is put beyond doubt by section 5986, which, by specifying four cases (two of which relate to the form of the policy) in which the three preceding sections shall not be applicable, necessarily implies that those sections shall control all cases not so specified, whatever be the form of the policy."

"It follows that the insertion in the policy of a provision for a different rule of commutation from that prescribed by the statute in case of default of payment of premium after three premiums have been paid, as well as the insertion in the application of a clause by which the beneficiary purports to 'waive and relinquish all right or claim to any other surrender value than that so provided, whether required by the statute of any State or not,' is

an effectual attempt to evade and nullify the clear words of the statutes."

The recent case of The Equitable Life Assur. Soc. *vs.* Nixon, 81 Fed. Rep., 796, was a suit upon a policy issued by the company, a corporation of the State of New York and doing business in the then Territory of Washington. The assured paid all premiums that accrued prior to July 14, 1890, according to the terms of the policy, but made default in the payment of the premium which fell due on that day, in consequence of which the corporation insisted that the policy was rendered void. The court observed: "That depends upon whether the contract is to be regarded as a Washington or New York contract, for there is no statute of Washington affecting that provision of the policy which declares that 'if any premium or installment of a premium on this policy
64 shall not be paid when due, this policy shall be void.'

"In the State of New York there is such a statute, and hence the principal question in the case is whether the policy in suit was a New York contract, and to be ruled in accordance with the statute of that State, or to be governed by the principles of the common law which are in force in Washington in respect to such contracts of insurance. We think it clear that the policy in question was a New York contract. * * * It would seem to be very clear, therefore, that the rights and obligations of the respective parties are to be measured and controlled by the laws of that State, subject, perhaps, to any additional limitations or conditions imposed by the statute of the State (then Territory) into which the defendant corporation went to solicit the business in question, for it may be true that every foreign corporation that enters a State other than that of its creation, and there transacts business, does so in subordination to the statutes of the State permitting its entry therein, and that no business transacted by virtue of the privilege thus conferred can, by any sort of contracts, be removed from the operation of the statute of the State permitting the business to be transacted.

But in the present case, as has been said, there is no Washington statute affecting that portion of the policy here in question."

It is manifest from this decision that if the statutes of Washington had prohibited the forfeiture of the policy upon the ground of the non-payment of premium when due, as do the statutes of this State, that the conclusion reached would have been different.

The rule to be deduced from the authorities seem to be that when no statute intervenes prohibiting it, a corporation doing business by permission in another State from that of its incorporation may by contract make the law of the State of its incorporation the applicatory law of the contract, but that where the laws of the State in which it does business by license prohibits such corpora-
65 tions from making certain kinds of contracts, they can only act in accordance therewith.

As the non-forfeiture clause in section 5983 does not come within the exceptions specified in section 5986, it would seem that the provision in the policy with respect to its forfeiture or lapse

after being in force three full years, by the non payment of premiums, is void and of no effect, and that such statutory provision cannot be waived.

While defendant does not concede that the policy in suit can upon any theory be held subject to the statutes of this State, it is insisted that the facts of this case bring the policy within the exception provided by section 5986, as the unconditional commutation paid-up insurance provided therein was equal at the time of default to the — provided by section 5984 of the statute, and the provision for extended insurance by the express terms of the statute was, therefore, not applicable.

By the provisions of sections 5986, *supra*, the three preceding sections are made inapplicable in case the policy shall contain a provision for an unconditional cash surrender value at least equal to the net single premium for the temporary insurance therefor provided therein, or for the unconditional commutation of the policy to non-forfeitable paid-up insurance, for which the net value shall be equal to that provided for in section 5984.

The policy was a fifteen-year payment life. It provided that in the event of default after being in force three full years "a paid-up policy will be issued on demand made within six months after such lapse, with surrender of this policy under the same conditions as this policy except as to payment of premiums, but without participation in profits, for an amount equal to as many fifteenth parts of the sum above insured as there shall have been complete annual payments paid thereon, which said default in the payment of premiums shall be made."

The provision with respect to paid-up policy provided by section 5984 of the statute is as follows: "That on demand made
66 within sixty days of default, the company shall issue its paid-up policy, which * * * in case of a limited-payment life policy or of a continued-payment endowment policy, payable at a certain time or at death, shall be for an amount bearing such a proportion to the amount of the original policy as the number of complete annual premiums actually paid shall bear — the number of such annual payment- stipulated to be paid (also providing for the deduction of indebtedness and the surrender of the original policy)."

It is argued that this comparison of the statute with the policy must obviously be made at the date of default, when the right of the insured to the benefit of his reserve matures; and as at this date, May, 1891, Mr. Cravens had paid four premiums, he was entitled to a commission to paid-up insurance of the precise amount fixed by section 5984; that the method of computation is identical, and therefore the value of the paid-up policy to which the insured was entitled at the time of the default on making demand thereof was precisely what he was entitled to under the statute; that it is immaterial under the policy that he had six months in which to make his demand, and under the statute only sixty days, or that he failed to make demand of the company for a paid-up policy, and that the company waived this failure, as the comparison must be made at

the date of default, as his rights under the policy become fixed at that time.

We are, however, inclined to a different view, and that this policy does not come within the provision of and is not governed or affected by section 5984.

This section, we think, has reference solely to paid-up policies, and gives the holder of a policy who is entitled to extended insurance, under section 5983, the right to compell the company, within a limited time from the beginning of such extended insurance, to convert the extended insurance into a paid-up policy of a prescribed value, if he so desire, but that this right ceases at the expiration of sixty days from the date that the unpaid premium becomes due, and if no demand be made within that time the right to
67 paid-up insurance no longer exists. No demand for paid-up insurance was made in this case, and this section cannot be considered as controlling the rights of the parties to this action. Section 5986 exempts from the control of sections 5983, 5984, and 5985 policies of insurance which contain a provision for an unconditional cash surrender of a fixed minimum amount and policies which contain a provision for unconditional commutation to non-forfeitable paid-up insurance of a fixed minimum amount, and also exempts from the control of said sections cases wherein the holder of the policy shall, within sixty days after default is made in the payment of the premium, surrender the policy and accept from the company another form of policy, or such consideration as the holder of the policy may be entitled to under it.

This policy contains no provision for a cash surrender value, nor has anything been done by its holder to bring it within either of the two exempted cases.

The question then arises, does the policy provide for its own unconditional commutation to non-forfeitable paid-up insurance? The policy contains this provision:

"That if the premiums are not paid as heretofore provided, on or before the days when due, then this policy shall become void and all payments previously made shall be forfeited to the company, except that * * * if this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a paid-up policy will be issued on demand, made within six months after such lapse, with surrender of this policy," &c.

There can be no question but that it was a condition precedent to the right of the holder of the policy in question after it lapsed for the non-payment of premiums to a paid-up policy that demand be made therefor, with surrender of the policy within six months after the policy lapsed, and no such demand could be waived by defendant so as to effect plaintiff's rights.

Hauthorne *vs.* Brooklyn Life Ins. Co., 5 Mo. App., 73, was a suit in equity to enforce specific performance of a contract of life
68 insurance. The policy contained the following clause:

"After two annual payments should the party wish to continue (notice to the company being given before the next premium becomes due) the company will issue a paid-up policy for as many

tenths of the amount originally as there have been annual premiums paid in cash." The assured paid more than two annual premiums. On December 28, 1871, another premium became due, which he failed to pay. In January, 1872, he notified the company that he wanted to discontinue his policy, and demanded a paid-up policy, which the company refused to issue, upon the ground that the assured had failed to comply with the conditions in the provisions of the policy quoted. It was held that by an express term of the policy the defendant had a right to notice before the then next premium became due of the assured's wish to discontinue, and to demand a paid-up policy, which was a condition precedent to his right thereto, and in the absence of such notice he was not entitled to recover.

Knapp *vs.* Homeopathetic Life Ins. Co., 117 U. S., 411, was a suit upon a policy of life insurance which provided "that unless this policy shall be surrendered and such paid-up policy shall be applied for within ninety days after such non-payment as aforesaid then this policy shall be void and of no effect, and it was held that the surrender of the policy and the application for a paid-up policy within ninety days after non-payment of the premium were conditions precedent to plaintiff's right to recover."

The same rule is announced with respect to policies containing similar provisions in the following cases: Sheerer *vs.* Manhattan Life Ins. Co., 16 Fed. Rep., 720; Northwestern Mutual Life Ins. Co. *vs.* Barbour *et al.*, 17 S. W. Rep., 796; Hudson *vs.* Knickerbocker Life Ins. Co., 28 N. J. Equity, 167; Coppey *vs.* Universal Life Ins. Co., 10 Bissell, 354.

69 Price *vs.* The Connecticut Life Ins. Co., *supra*, was a suit upon a life-insurance policy containing this provision, viz: "If after the payment of two or more annual premiums as above, any subsequent premium or installment of premium be not paid when due, said company do thereupon and thereafter, and upon the same consideration hereinbefore set forth, but without further payment of premiums, insure said life for said term, but only in a sum to be ascertained by the table of paid-up insurance indorsed herein and hereby made a part of this contract, such sum to be payable at the time and place and in the manner and to the persons above named."

In that case the assured died after having made two full annual premiums on said policy. The last installment was paid March 4, 1888. The administrator of the assured claimed that the policy at the date of the payment of the last installment of premiums had acquired a net value of eighty dollars, to be computed according to the terms of the policy, and that three-fourths of such net value taken and applied as a net single premium for temporary insurance for the full amount written in the policy entitled the insured to temporary insurance for $2,000 for a term expiring March 4, 1889, and brought suit for that sum.

The defendant company resisted the recovery on the ground that the value of the policy and the amount which the representatives of the assured were entitled to recover thereunder must be deter-

mined by the terms of the contract between the assured and the company, and not by the provisions of the statute of the State of Missouri, the provisions of which were expressly waived by the parties and were inapplicable under the exceptions made by section 5986.

70 As there had been paid more than two full annual premiums *paid* on the policy, plaintiff claimed temporary insurance under section 5983, but the court held that the clause in the policy quoted provided for the unconditional commutation of the policy to non-forfeitable paid-up insurance; that the policy come within the second exception of section 5986, and that plaintiff was entitled to paid-up insurance, according to the terms of the policy, and not to temporary insurance under the provisions of section 5983.

It does not appear that the policy in suit in that case required that a demand for a paid-up policy be made on the company at any time before it would agree to issue such a policy, in which event plaintiff's policy would have been a conditional one, and would have entitled the holder to temporary insurance for the face of the policy under section 5983, but in the case at bar the policy required that demand be made for a paid-up policy within six months after default in the payment of premium, before the holder was entitled to a paid-up policy. Whether the holder would exercise that right or not was discretionary with him and not for defendant to decide for him. It follows that the policy in suit is not governed by section 5986.

It is, however, controlled by sections 5983 and 5985.

By section 5983 three-fourths of the net reserve is applied on the policy as a single premium, which continues the full amount of the policy in force and then prescribes a rule for fixing the term for which such temporary insurance shall be in force.

By section 5985 it is provided that if the death of the assured occur within the term of temporary insurance covered by the policy the company shall be bound to pay the amount of the policy, less the unpaid premiums, with compound interest thereon at six per cent.

71 The policy was a fifteen-year endowment, issued May 11, 1887, for $10,000; age of the assured at that time was 49 years. Four annual premiums of $589.50 were paid on it, default being made in the payment of the premium which fell due May 11, 1891. Its net value, based upon American experience table of mortality, with interest at 4½ per cent. at the date of default in payment of premium, was $1,957.21. Under section 5983 of the statutes three-fourths of the net value, or $1,467.91, is applied as a single premium for temporary insurance at the attained age of the insured at the time of default in payment of premium.

The insured at time of default in premium in this case being 53 years old and the amount to be applied as a single premium for temporary insurance $1,467.91, the insurance is in force for a period of nine years and seventy-one days from date of lapse, May 11, 1891, and upon this basis plaintiff is entitled to recover.

It is well settled that the legislature of the State has the power to pass laws regulating and prescribing rules by which foreign insurance companies may do business in this State and to prohibit them from doing so altogether if so inclined. Paul *vs.* Virginia, 8 Wall., 168; State *vs.* Stone, *supra;* Hooper *vs.* California, 155 U. S., 648; Daggs *vs.* Insurance Co., *supra.* This case has recently been affirmed by the Supreme Court of the United States.

It logically follows that in passing the sections of the statute quoted the legislature did not exceed the powers conferred upon it by the State constitution, and that such legislation is not in conflict with any provision of the Constitution of the United States.

For these considerations we reverse the judgment and remand the cause, with directions to the court below to enter up judgment for plaintiff in accordance with the views herein expressed.

Gantt, C. J.; Sherwood, Brace, Robinson, JJ., concur; Marshall, J., absent; Valliant, J., not sitting.

G. D. BURGESS, *J.*

72 And afterwards, to wit, on the 2nd day of March, 1899, the further following proceedings were had in said cause, viz:

FANNIE CRAVENS, App.,
vs.
N. Y. LIFE INS. CO., Resp.

Comes now the said respondent, by attorney, and files its motion for a rehearing herein.

Which said motion for rehearing is in words and figures as follows, to wit:

In the Supreme Court of Missouri, in Banc, October Term, 1898.

FANNIE CRAVENS, Appellant,
vs.
NEW YORK LIFE INSURANCE COMPANY, Respondent. } No. 7606.

Respondent's Motion for Rehearing.

Now comes respondent and moves the court to set aside the judgment of reversal entered in this cause on the 21st day of February, 1899, and to grant a rehearing, and for reasons therefor respondent says:

First. That the court in its construction of the term "unconditional commutation," in section 5986, R. S. 1889, of the statute relied upon by appellant overlooked the distinction between conditions dependent upon the will of the insured and conditions not so dependent, which distinction was decisive of the case and was duly submitted by counsel.

Second. The court in holding that the contract of insurance evidenced by the policy in this case was a Missouri contract because of the delivery and payment of premium in Missouri therein

overlooked the question decisive of the case and duly submitted by counsel, to wit, the principle of universal law that every contract is governed by the law with a view to which it is made, and
73 where the intent of the parties is expressed, as in the case at bar, that intention must be given force.

Third. The court in its opinion fails to distinguish between an attempted waiver of a statutory regulation based upon public policy and the agreement in good faith by the parties to an interstate contract for the applicatory law of one of such States in furtherance of the purposes of a contract; which distinction is decisive of the case and was duly presented by counsel.

Fourth. The court overlooked what was duly submitted by counsel, that the contract in this case, being a contract not only of mutual but of tontine insurance, was one wherein the other members of the tontine class had acquired contingent interests therein in consideration of the contingent interest enjoyed by the appellant in the policy contracts of her associates in the same class. The decision of the court ignores these contractual relations, defeats the purpose of the contract, and this question, decisive of the case and duly submitted by counsel, was overlooked by the court.

Fifth. The statute, as construed by the court, is violative of the Constitution of the United States and of the fourteenth amendment thereof, in that it destroys the contractual liberty of the parties and makes a new contract for them violative of their expressed intent; which question is decisive of the case and was duly submitted by counsel to the court.

Sixth. The court overlooked the essential character of the contract in this case, which was decisive thereof and was duly submitted by counsel, in that it was a contract of mutual life insurance wherein all the policy-holders of the company were associated, and the statute, as construed by the court, is violative of that right of contractual association in mutual life insurance which is guaranteed by the Constitution of the United States.

Seventh. The court overlooked the essential distinction decisive of the case and duly submitted by counsel, to wit, the dis-
74 tinction between a policy contract of mutual life insurance, such as in the case at bar, and that of fire insurance, as presented in Paul *vs.* Virginia, 8 Wallace, 168, and in Daggs *vs.* Insurance Co., 136 Mo., 382.

Eighth. The court overlooked the distinction decisive of the case and duly submitted by counsel between the regulation of foreign insurance companies and the right of contract guaranteed to such corporations and all other persons, individuals and corporate, by the Constitution of the United States and the fourteenth amendment thereof.

And afterwards, to wit, on the 10th day of March, the said appellant filed the following motion to modify the opinion herein:

FANNIE CRAVENS, Appellant,
vs.
NEW YORK LIFE INSURANCE COMPANY, Respondent. } No. 7606.

The court's attention is respectfully called to page 25 of the opinion, where the policy in suit is called an endowment. Under agreed statement and admission of counsel, the policy is not an endowment, but a fifteen-year limited payment, life. *Vide* policy, Appellant's Brief, p. 21.

The court is respectfully requested to modify its order of reversal in such manner as will cause judgment to be entered for appellant in the sum of $8,749.21, together with 6 per cent. interest thereon from Nov. 30, 1892, the date demand was made for $8,749.21 and payment was by respondent refused. *Vide* agreed statement, § 16, and Appellant's Brief, pp. 6, top, and p. 79. Appellant is admittedly entitled to recover *his* interest on becoming entitled to recover the extended insurance of $8,749.21.

Extended insurance	$8,749.21
Interest, 6 per cent., from Nov. 30, '92, to M'ch 12, '99..	3,298.10
	$12,047.31

Respectfully submitted.

75 WILLIAM B. C. BROWN,
JAMES H. CRAVENS,
KARNES, HOLMES & KRAUTHOFF,
Attorneys for Appellant.

And afterwards, to wit, on the 14th day of March, 1899, the further following proceedings were had in said cause, viz:

FRANNIE CRAVENS, App.,
vs.
N. Y. LIFE INS. CO., Resp.

Now, at this day, the court, having fully considered and understood the motions heretofore filed for rehearing herein, doth order that said motions be, and the same are hereby, denied.

And afterwards, to wit, on the 21st day of March, 1899, the further following proceedings were had in said cause, viz:

FANNIE CRAVENS, App.,
vs.
N. Y. LIFE INS. CO., Resp.

Now, at this day, the court, having fully considered and understood the motion heretofore filed to modify the opinion herein, doth order that said motion be sustained, and the opinion is modified accordingly.

Which said opinion so modified, as aforesaid, is in the words and figures following, to wit:

76 In the Supreme Court of Missouri, in Banc, October Term, 1898.

FANNY CRAVENS, Appellant,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Respondent.

In banc.

This is a suit upon a policy of life insurance for ten thousand dollars issued by the defendant company upon the life of J. K. Cravens, deceased, in favor of the plaintiff, who was his wife. The case was tried by the court, a jury being waived. There was judgment in favor of plaintiff in the sum of $2,670, from which, after an unsuccessful motion for a new trial, she appeals, claiming that she is entitled to recover the sum of $8,749.21—that is, the face of the policy, $10,000, less the two unpaid premiums which were due at the time of the death of the assured, together with interest thereon.

The petition alleges that the policy was issued on the 11th day of May, 1887; the payment of all annual premiums until May, 1891; the death of the assured on November 2, 1892; that under the statute the insurance was extended and was in force at the date of the death of the assured, and asks judgment for the amount of the policy, less the unpaid premiums.

The answer of defendant alleges that it is a mutual insurance company duly incorporated under the laws of the State of New York and doing business in this State; that by agreement of the parties the law of that State was made the law governing the contract; set up that the assured made default in May, 1891, after paying four annual premiums, and tendered the sum of $2,670.00, the amount of paid-up or commuted policy, to which the original policy was entitled by its terms on such default, waiving failure to make demand therefor. It also alleges that other policy-holders—that is, other members of the same tontine class—had, by the terms of their respective policies, acquired, with plaintiff, contingent and mutual interests in the profits and surplus to be derived from the premiums on all policies of such class, and that the company, on the faith
77 of plaintiff's contract, had incurred obligations to the other members of the tontine class, and that plaintiff is now estopped from setting up any other or different claim under the policy.

The answer further alleges that if the statute of Missouri relied on by plaintiff was construed so as to nullify the non-forfeiting agreement upon the faith of which the policy was issued and without which it would not have been issued, and to create and enforce an obligation contrary to the expressed intent of the parties, that then the statute so construed is repugnant to the constitution of Missouri and to the Constitution of the United States.

The application for the policy is made part of the contract and contains the following provisions:

"2. That inasmuch as only the officers of the office of the said company in the city of New York have authority to determine whether or not a policy shall issue on any application, and as they

act on the written statements and representations referred to, no statements, representations, promises, or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on said company, or in any manner affect its right, unless such statements, representations, or information, be reduced to writing and presented to the officers of the company, at the home office in the application." * * *

4. That under no circumstances shall the policy hereby applied for be in force until the actual payment to and acceptance of the premium by the company or its authorized agent during the lifetime and good health of the person on whose life insurance is applied for.

6. That the entire contract contained in the said policy and in this application, taken together, shall be construed and interpreted as a whole and in each of its parts and obligations, according to the laws of the State of New York, the place of the contract being expressly agreed to be the principal office of the said com-
78 pany in the city of New York.

The policy contains this further provision:

That if the premiums are not paid, as hereinafter provided, on or before the days when due, then this policy shall become void, and all payments previously made shall be forfeited to the company, except that if this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a paid-up policy will be issued, on demand made within six months after such lapse with the surrender of this policy, under the same conditions as this policy except as to payments of premiums, but without participation in profits, for an amount equal to as many fifteenth parts of the sum above insured as there shall have been complete annual premiums paid hereon when said default in the payment of premiums shall be made; and all right, claim or interest arising under statute, or otherwise, to or in any other paid-up policy or surrender value, and to or in any temporary insurance, whether required or provided for by the statute of any State, or not, is hereby expressly waived and relinquished.

The cause was tried upon an agreed statement of facts, the material parts of which are as follows:

1. That the defendant is a corporation organized and existing under the laws of the State of New York as a mutual life insurance company, without capital stock, having its chief office in the city of New York, and was at the date of issuing the policy in question and since has been and now is engaged in the business of insuring lives through branch offices situated in the different States and Territories of this country and certain foreign countries.

2. That the defendant for many years past has maintained branch offices in the State of Missouri, and has employed agents to solicit applications for insurance from citizens of Missouri, and in the year 1887, as both prior and subsequent thereto, defendant had received from the superintendent of insurance a certificate of authority to transact business in said State.

79 3. That during the year 1886 and prior to the issuance of the policy sued upon the amount of policies issued by defendant to citizens of Missouri was $1,617,985.00, and the amount of insurance in force on the lives of citizens of Missouri on December 31, 1886, was $8,886,542.00, and the total amount of policies issued by defendant in said year 1886 was $85,178,294.00, and the total amount of policies in force on December 31, 1886, issued by defendant was $304,373,540.00.

4. That on the second day of May, 1887, and long prior thereto John K. Cravens was a citizens of the State of Missouri and resident of the county of Jackson, in said State; that on the said date and long prior thereto said John K. Cravens was the husband of Fannie Cravens, the plaintiff herein, and thereafter continued to be the husband of said plaintiff, Fannie Cravens, until the time of his death.

5. That the defendant in the transaction of its business had adopted different forms of policies, embodying different and varying plans of insurance, all of them being on the mutual plan, the premiums paid, less the expense of management, being administered solely for the benefit of the policy-holders, defendant having no capital stock.

6. That on the second day of May, 1887, the local agents of defendant solicited said John K. Cravens, at his residence, in the county of Jackson and State of Missouri, to insure his life in the defendant company, and submitted to him the different plans of insurance then in use by said defendant, and said John K. Cravens selected the plan known as the non-forfeiting, limited tontine policy, fifteen-year endowment, with limited premium return, tontine, signed a written application therefor, and also signed the same in the name of the plaintiff, Fannie Cravens, as beneficiary of the policy to be issued thereunder; which said application is herewith filed * * * and made a part hereof as fully as if set forth herein. Said written application was thereupon delivered to defendant's agent at Kansas City, and was by him forwarded
80 with the report of the medical examination of said Cravens; which said medical examination of said Cravens was made by the examiner of defendant company at Kansas City, in the State of Missouri, and by said agent forwarded to defendant's home office, in the city of New York.

7. That thereafter, on the 10th day of May, 1887, said application and medical examination was received at the home office of the defendant, in the city of New York, State of New York, and was there examined by the officers of defendant, and on the 11th day of May said application and medical examination was accepted and approved, and the policy in suit, No. 250,213, was thereupon executed by the officers of said defendant at said home office; which said policy is herewith filed * * * and made a part hereof as fully as if set forth herein.

8. That said policy was transmitted by defendant to its agents at Kansas City, in Jackson county, and on the 20th day of May, 1887, the policy was delivered to said Cravens, in the county of

Jackson, in the State of Missouri, by said agent, and the first premium of $589.50 was paid by said Cravens, in the State of Missouri, to the said agent of defendant and by said agent transmitted to defendant's home office.

9. That said Cravens thereafter paid to defendant the premiums due upon said policy upon the 11th day of May, 1888, and on the 11th day of May, 1889, and on the 11th day of May, 1890, the amount of each of said premiums being received by the agent of the defendant from said Cravens at defendant's branch office in Kansas City and transmitted to defendant's home office, said agent delivering therefor to said Cravens receipts of defendant, signed by the chief officers of the company and countersigned by said agent.

10. That default was made in the payment of the premium due on the 11th day of May, 1891, and said premium has not been paid, and no subsequent premium has been paid.

81 11. That said John K. Cravens died in Kansas City, in the State of Missouri, on the second day of November, 1892, and thereafter, on the 30th day of November, 1892, proofs of death in due form, as called for by the policy of insurance, were by Fannie Cravens made out and delivered to defendant and received by defendant. A copy of said proofs of death is herewith filed * * * and made a part hereof as fully as if set forth herein.

12. That the amount of paid-up insurance to which the policy in suit, No. 250,213, was entitled according to the terms of the application and policy was $2,670; that no demand for such paid-up policy was made by or on behalf of said Cravens within six months after default, on May 11, 1891, or at any time; that defendant, upon the death of said Cravens, offered to waive the failure to make such demand, and tendered plaintiff and still tenders the amount of said policy, to wit, $2,670, which she declined and still declines to receive.

13. At the date of the issuance of said policy the only statute of the State of New York regulating or in any way relating to the forfeiture of life insurance is that set forth in chapter 341 of the Laws of 1876 of the State of New York as amended by chapter 321 of the Laws of 1877 of the said State; which said statutes may be referred to as if set forth in full herein.

14. The total number of policies issued during the year 1887 by defendant on the "non-forfeiting, limited tontine policy plan, with fifteen years' tontine period," constituting the same tontine class with policy No. 250,213, issued to the residents of all the States and countries wherein defendant did business, was five thousand one hundred and seventy-two (5,172), covering aggregate insurance in the sum of $20,154,981.00.

15. That said John K. Cravens on the 11th day of May, 1891, was fifty-three years of age, and the term of temporary insurance procured at that date by three-fourths of the net value of the policy taken as a single premium for the amount written in the policy was six years and forty-six days from the 11th day of May,

82 1891, making said policy, if subject to said extended insurance, in force at the date of the death of the said Cravens.

16. The amount which plaintiff claims under said policy is the face of the policy, to wit, $10,000, less the amount of unpaid premiums, with interest thereon, leaving a balance claimed of $8,749.21, with interest thereon, at the rate of six per cent. per annum, from the 30th day of November, 1892, and the defendant admits and offers to pay the aforementioned sum of $2,670, which the plaintiff declines to receive.

The several sections of the Revised Statutes of 1879 in force at the date of the policy sued on and having any bearing upon the issues involved are as follows:

"SECTION 5983. Policies non-forfeitable, when.—No policy of insurance on life hereafter issued by any life insurance company authorized to do business in this State, on and after the first day of August, A. D. 1879, shall, after payment upon it of two full annual premiums, be forfeited or become void by reason of the non-payment of premiums, thereon, but it shall be subject to the following rules of commutation, to wit: The net value of the policy when the premium become- due and is not paid shall be computed upon the American experience table of mortality, with four and one-half per cent. interest per annum, and after deducting from three-fourths of such net value any notes or other indebtedness to the company, given on account of past premium payments on said policy issued to the insured, which indebtedness shall then be cancelled, the balance shall be taken as a net single premium for temporary insurance for the full amount written in the policy; and the term for which such temporary insurance shall be in force shall be determined by the age of the person, whose life is insured at the time of default of premium, and the assumption of mortality and interest aforesaid, but if the policy shall be an endowment, payable at a certain time, or at death if it should occur previously then if what remains as aforesaid shall exceed the net single premium of temporary insurance for the remainder of the endowment
83 term for the full amount of the policy, such excess shall be considered as a net single premium, for a pure endowment of so much as such premium will purchase determined by the age of the insured at date of defaulting the payment of premium on the original policy, and the table of mortality and interest as aforesaid, which amount shall be paid at the end of the original term of endowment, if the insured shall then be alive.

"SEC. 5984. A paid-up policy may be demanded, when at any time after the payment of two or more full annual premiums and not later than sixty days from the beginning of the extended insurance provided in the preceding section the legal holder of the policy may demand of the company, and the company shall issue its paid-up policy, which in case of an ordinary life policy, shall be for such an amount as the net value of the original policy at the age and date of lapse, computed according to the American experience table of mortality, with interest at the rate of four and a half per cent. per annum, without deduction of indebtedness on account of said policy, will purchase, applied as a single premium upon the table rates of the company, and in case of a limited-payment life

policy, or of a continued-payment endowment policy payable at a certain time, or death, it shall be for an amount bearing such proportion to the amount of the original policy as the number of complete annual premiums actually paid shall bear to the number of such premiums stipulated to be paid: Provided, that from such an amount the company shall have the right to deduct the net reversionary value of all indebtedness to the company on account of such policy; and, provided, further that the policy-holder shall, at the time of making demand for such paid-up policy, surrender the original policy, legally discharged, at the parent office of the company.

"SEC. 5985. Rule of payment on commuted policy.—If the death of the insured occur within the term of temporary insurance covered by the value of the policy as determined in section 5983, and if no condition of the insurance other than the payment
84 of premiums shall have been violated by the insured, the company shall be bound to pay the amount of the policy, the same as if there had been no default in payment of premiums, anything in the policy to the contrary notwithstanding: Provided, however, that notice of the claim and proof of the death shall be submitted to the company in the same manner as provided by the terms of the policy, within ninety days after the decease of the insured; and, provided, also, that the company shall have the right to deduct from the amount insured in the policy the amount compounded at six per cent. interest per annum of all the premiums that had been forborne at the time of the decease, including the whole of the year's premium in which the death occurs, but such premiums shall in no case exceed the ordinary life premium for the age at issue, with interest as last aforesaid.

"SEC. 5986. The foregoing provisions not applicable, when.—The three preceding sections shall not be applicable in the following cases, to wit: If the policy shall contain a provision for an unconditional cash surrender value at least equal to the net single premium for the temporary insurance provided hereinbefore, or for the unconditional commutation of the policy to non-forfeitable paid-up insurance for which the net value shall be equal to that provided for in section 5984, or if the legal holder of the policy shall, within sixty days after default of premium, surrender the policy and accept from the company another form of policy, or if the policy shall be surrendered to the company for a consideration adequate in the judgment of the legal holder thereof, then, in any of the foregoing cases, this act shall not be applicable."

The plaintiff contends that the contract of insurance, which form the basis of this suit, is a Missouri contract and must be governed by its laws, notwithstanding the defendant is a corporation incorporated under the laws of the State of New York, has its chief office there, and that the contract provides that the contract con-
85 tained in the policy and application shall be construed according to the laws of the State of New York, the place of said contract being agreed to be the home office of said company in the city of New York. This contention is not only predicated of

the fact that the contract also provides "that under no circumstances shall the policy hereby applied for be in force until the actual payment to and acceptance of the premiums by the company or its authorized agent during the lifetime and good health of the person on whose life insurance is applied for," but upon the further fact that the application was by defendant's agent in Kansas City, Missouri, transmitted to defendant at its home office in said city, upon receipt of which the company issued the policy containing the clause quoted, sent the same to its agent at Kansas City, who afterwards delivered the policy to the insured in Missouri, and then and there received the first premium. However perfect in form the contract may have been, and although all of its other terms and conditions may have been complied with, payment of the premium during the life and good health of the assured and delivery of the contract to him were conditions precedent in order to complete its execution, and as if the premiums were paid and the policy delivered to the assured, in this State, it must follow that the contract was executed here.

Equitable Life Society *vs.* Clements, 140 U. S., 226, was a suit upon a life-insurance policy executed in New York by a corporation of that State doing business in this State upon an application signed in this State by one of its residents and made part of the contract, which provided that it should not take effect until the first premium was actually paid during the life of the person proposed for insurance and which was delivered and the first premium paid in Missouri, and it was held, in the absence of evidence of the company's acceptance of the application in New York, to be a Missouri contract and governed by the laws of Missouri.

In Hicks *vs.* National Life Ins. Co., 60 Fed. Rep., 690, it is said:

"If any authority were needed for the proposition that a
86 policy applied for in New York, delivered there and the premiums paid there, is a New York contract, notwithstanding it is signed and issued by the insurer in another State, the reference is supplied by the case of Assur. Soc. *v.* Clements, 140 U. S., 226. The delivery of the policies in the present case was made in New York city to an agent of the assured and in legal effect was as if the assured had been personally present and received them. Then, and not before, the policies took effect."

In Northwestern Mut. Life Ins. Co. *v.* Elliott *et al.*, 5 Fed. Rep., 225, an application for a policy was made at Portland, Oregon, to the company's agent, who forwarded same to the company at Milwaukee, Wisconsin. The company thereupon, in Wisconsin, issued its policy containing a clause, viz:

"This policy shall not take effect and become binding on the company until the premium shall be actually paid during the lifetime of the person whose life is assured to the company or some person authorized to receive it, who shall countersign the policy on receipt of the premium," and transmitted same to its agent at Portland, Oregon, who there delivered it to the insured.

The court said: "Where, then, was this contract made; in Wisconsin or Oregon? The answer to this question involves the in-

quiry where did the final act take place which made the transaction a contract binding on the parties?

"The premium was paid to the agent of the plaintiff at Portland, who then and there countersigned and delivered the policy. This was the consummation and completion of the contract. But, to put this beyond a doubt, the policy itself declares that it shall not be binding on the company until these acts are performed, and until it was binding on the company it was not binding on the applicant; in short, it was not yet a contract, but only a proposition." Pomeroy *vs.* Manhattan Life Ins. Co., 40 Ills., 400; Thwing *vs.* Great Western Ins. Co., 111 Mass., 109; Wood F. Ins., 189, note 2; Hardie *v.* St. Louis Mut. Life Ins. Co., 26 La. Ann., 242; St. Louis Mut. Life Ins. Co. *vs.* Kennedy, 6 Bush., 450.

87 In Fletcher *vs.* New York Life Ins. Co., 13 Fed. Rep., 526, the policy was delivered in Missouri to a citizen of Missouri and the first premium there paid. The court said:

"The defendant company was doing business in Missouri with the privileges granted to it here when said insurance was effected. It may be that the formal acceptance of the proposed contract was by the letter of the contract to be consummated in New York. The broad proposition, however, remains, no artifice to avoid which can be upheld. The statutes of Missouri, for salutary reasons, permit foreign corporations to do business in the State on prescribed conditions. If, despite such conditions, they can by the insertion of clauses in their policies withdraw themselves from the limitations of the Missouri statutes while obtaining all the advantages of its license, then a foreign corporation can by special contract upset the statutes of the State and become exempt from the requirements of law. Such a proposition is not to be countenanced. If the defendant corporation chose to embark in business within this State under the terms and conditions named in the statute, it could not by paper contrivances, however specious, withdraw itself from the operation of the laws by force of which it could alone do business within the State. To hold otherwise would be subversive of the right of the State to decide on what terms by comity a foreign corporation should be permitted to do business or be recognized therefor within the State jurisdiction. Each State can decide for itself whether a foreign corporation shall be recognized and on what terms. Primarily, a corporation has no existence beyond the territorial limits of the State creating it, and when it does undertake business beyond it does so only by comity. The defendant corpotion, having been permitted to do business in Missouri under the statutes of the latter, was bound by all the provisions of those statutes, and could not, by the insertion of any of the many clauses in its forms of application, etc., withdraw itself from the obli-

88 gatory force of the statute. The contract of insurance is, therefore, a Missouri contract and subject to the local law."

In the case of Wall *vs.* Equitable Life Assur. Soc., 32 Fed. Reporter, 273, it was said:

"The defendant is a New York corporation doing business in the State of Missouri. The insured was a citizen and resident of

Missouri and made his application here, which was forwarded to New York; the application was accepted, the policy fully prepared and signed in that State and sent to Missouri and delivered to the applicant here. By the terms of the policy all premiums are payable at the defendant's office in New York. If the sum insured should become payable, the payment is to be made at its office in New York. * * * Under these facts I have little doubt as to the true answer to be made to this first question, viz: 'Is the contract sued on governed and to be construed by the laws of the State of New York or by the laws of the State of Missouri? In White *vs.* Insurance Company, 4 Dill., 177, it was held that the act of the legislature of the State of Missouri, March 23rd, 1874, in respect to policies of life insurance extends to all policies of life insurance delivered in this State after the act went into effect.' That was a suit against a foreign insurance company doing business in the State. In Fletcher *vs.* Ins. Co., 13 Fed. Rep., 526, it was held that a foreign insurance company cannot withdraw itself from the operation of the statute of a State in which it does business by insertion of clauses in its policies." That was a case in which the defendant company insisted that, by virtue of certain clauses in the application, the contract was to be finally and fully executed in New York. In his opinion, an opinion concurred in by Circuit Judge McCrary, Judge Treat uses this language:

"The defendant corporation, having been permitted to do business in Missouri under the statutes of the latter, was bound by all the provisions of those statutes, and could not, by the insertion of any of the many clauses of its forms of application, withdraw
89 itself from the obligatory force of the statute. The contract of insurance is, therefore, a Missouri contract and subject to the local law."

"In view of these authorities and considering the reasoning of Judge Treat in the opinion above referred to, I deem it unnecessary to discuss the question further and simply hold that the Missouri statute controls." Affirmed in Supreme Court U. S.

The same rule is announced in Equitable Life Soc. *vs.* Winning, 58 Fed. Rep., 541; Berry *vs.* Knights Templars and Masons' Life Indemnity Company, 46 Fed. Rep., 439, and in Price *vs.* The Connecticut Mutual Life Ins. Co., 48 Mo. App., 281.

It is true that there was no express provision in the contract which formed the basis of the Clements suit, *supra*, as there is in the case at bar, with respect to the State by whose laws the contract should be construed or as to the place of contract; but defendant was at the time of the execution of the contract doing business in this State *ex gratia* and could not with respect to such business evade the statute of this State or withdraw itself from its operation by the insertion of clauses in the policy. Fletcher *vs.* Ins. Co., *supra;* Wall *vs.* Equitable Life Assurance Co., *supra.*

In Price *vs.* Insurance Co., *supra*, it is said: "Where an insurance company does business in this State and issues its policies to residents of this State the validity of clauses in its policies must be determined by the laws of this State. The laws of this State establish

a rule of public policy which overrides the freedom of contract of the parties and makes waiver of statutory provisions eneffectual, although such waivers are contained in the strongest terms in the policies."

Foreign insurance companies which do business in this State do so not by right, but by grace, and must in so doing conform to its laws; they cannot avail themselves of its benefits without
90 bearing its burdens; moreover, the State may prescribe conditions upon which it will permit a foreign insurance company to transact business within its borders or exclude them altogether, and in so doing violates no contractural rights of the company. State *vs.* Stone, 118 Mo., 388; Daggs *vs.* Ins. Co., 136 Mo., 382; same case, — U. S., —.

It is therefore concluded that the contract is a Missouri contract and governed by the laws of this State.

Being a Missouri contract, the statute then in force with respect to the subject-matter of the contract entered into and become part thereof as much so as if copied therein. State, to use of Wolf, *vs.* Berning, 74 Mo., 84; Reed *vs.* Painter, 129 Mo. L. C., 680; Havens *vs.* Germania Fire Ins. Co., 123 Mo., 403; White *vs.* Ins. Co., 4 Dillon, 177.

The question, then, is, Could the parties themselves enter into a contract, either directly or indirectly, waiving the provisions of the statute?

It was held in Equitable Life Assurance Society *vs.* Clements, *supra*, that sections 5983, 5986, *supra*, established a rule of commutation upon default in payment of premiums after two premiums have been paid on a policy of life insurance, which could not be raised or waived by express provision in the contract except in the cases specified in those statutes. The court said:

"The manifest object of the statute, as of many statutes regulating the form of policies of insurance on lives or against fires, is to prevent insurance companies from inserting — their policies conditions of forfeiture or restriction, except so far as the statute permits. The statute is not directory only or subject to be set aside by the company with the consent of the assured, but it is mandatory and controls the nature and terms of the contract into which the company may induce the assured to enter. This clearly appears from the unequivocal words of command and of prohibition above quoted, by which, in section 5983, 'no policy of insurance' issued by any life insurance company authorized to do business in
91 this State 'shall, after the payment of two full annual premiums, be forfeited or become void by reason of the nonpayment of premium thereon, but it shall be subject to the following rules of commutation,' and in section 5985, that if the assured dies within the term of temporary insurance, as determined in the former section, 'the company shall be bound to pay the amount of the policy,' 'anything in the policy to the contrary notwithstanding.' This construction is put beyond doubt by section 5986, which, by specifying four cases (two of which relate to the form of the policy) in which the three preceding sections shall not be applicable, neces-

sarily implies that those sections shall control all cases not so specified, whatever be the form of the policy."

"It follows that the insertion in the policy of a provision for a different rule of commutation from that prescribed by the statute in case of default of payment of premium after three premiums have been paid, as well as the insertion in the application of a clause by which the beneficiary purports to 'waive and relinquish all right or claim to any other surrender value than that so provided, whether required by the statute of any State or not,' is an effectual attempt to evade and nullify the clear words of the statutes."

The recent case of The Equitable Life Assur. Soc. *vs.* Nixon, 81 Fed. Rep., 796, was a suit upon a policy issued by the company, a corporation of the State of New York and doing business in the then Territory of Washington. The assured paid all premiums that accrued prior to July 14, 1890, according to the terms of the policy, but made default in the payment of the premium which fell due on that day, in consequence of which the corporation insisted that the policy was rendered void. The court observed: "That depends upon whether the contract is to be regarded as a Washington or New York contract, for there is no statute of Washington affecting that provision of the policy which declares that 'if any premium or installment of a premium on this policy
92 shall not be paid when due, this policy shall be void.'

"In the State of New York there is such a statute, and hence the principal question in the case is whether the policy in suit was a New York contract, and to be ruled in accordance with the statute of that State, or to be governed by the principles of the common law which are in force in Washington in respect to such contracts of insurance. We think it clear that the policy in question was a New York contract. * * * It would seem to be very clear, therefore, that the rights and obligations of the respective parties are to be measured and controlled by the laws of that State, subject, perhaps, to any additional limitations or conditions imposed by the statute of the State (then Territory) into which the defendant corporation went to solicit the business in question, for it may be true that every foreign corporation that enters a State other than that of its creation, and there transacts business, does so in subordination to the statutes of the State permitting its entry therein, and that no business transacted by virtue of the privilege thus conferred can, by any sort of contracts, be removed from the operation of the statute of the State permitting the business to be transacted.

But in the present case, as has been said, there is no Washington statute affecting that portion of the policy here in question."

It is manifest from this decision that if the statutes of Washington had prohibited the forfeiture of the policy upon the ground of the non-payment of premium when due, as do the statutes of this State, that the conclusion reached would have been different.

The rule to be deduced from the authorities seem to be that when no statute intervenes prohibiting it, a corporation doing business

by permission in another State from that of its incorporation may by contract make the law of the State of its incorporation the applicatory law of the contract, but that where the laws of the State in which it does business by license prohibits such corporations from making certain kinds of contracts, they can only act in accordance therewith.

93

As the non-forfeiture clause in section 5983 does not come within the exceptions specified in section 5986, it would seem that the provision in the policy with respect to its forfeiture or lapse after being in force three full years, by the non payment of premiums, is void and of no effect, and that such statutory provision cannot be waived.

While defendant does not concede that the policy in suit can upon any theory be held subject to the statutes of this State, it is insisted that the facts of this case bring the policy within the exception provided by section 5986, as the unconditional commutation paid-up insurance provided therein was equal at the time of default to the — provided by section 5984 of the statute, and the provision for extended insurance by the express terms of the statute was, therefore, not applicable.

By the provisions of sections 5986, *supra*, the three preceding sections are made inapplicable in case the policy shall contain a provision for an unconditional cash surrender value at least equal to the net single premium for the temporary insurance therefor provided therein, or for the unconditional commutation of the policy to non-forfeitable paid-up insurance, for which the net value shall be equal to that provided for in section 5984.

The policy was a fifteen-year payment life. It provided that in the event of default after being in force three full years "a paid-up policy will be issued on demand made within six months after such lapse, with surrender of this policy under the same conditions as this policy except as to payment of premiums, but without participation in profits, for an amount equal to as many fifteenth parts of the sum above insured as there shall have been complete annual payments paid thereon, which said default in the payment of premiums shall be made."

The provision with respect to paid-up policy provided by section 5984 of the statute is as follows: "That on demand made within sixty days of default, the company shall issue its paid-up policy, which * * * in case of a limited-payment life policy or of a continued-payment endowment policy, payable at a certain time or at death, shall be for an amount bearing such a proportion to the amount of the original policy as the number of complete annual premiums actually paid shall bear — the number of such annual payment- stipulated to be paid (also providing for the deduction of indebtedness and the surrender of the original policy)."

94

It is argued that this comparison of the statute with the policy must obviously be made at the date of default, when the right of the insured to the benefit of his reserve matures; and as at this date, May, 1891, Mr. Cravens had paid four premiums, he was

entitled to a commission to paid-up insurance of the precise amount fixed by section 5984; that the method of computation is identical, and therefore the value of the paid-up policy to which the insured was entitled at the time of the default on making demand thereof was precisely what he was entitled to under the statute; that it is immaterial under the policy that he had six months in which to make his demand, and under the statute only sixty days, or that he failed to make demand of the company for a paid-up policy, and that the company waived this failure, as the comparison must be made at the date of default, as his rights under the policy become fixed at that time.

We are, however, inclined to a different view, and that this policy does not come within the provision of and is not governed or affected by section 5984.

This section, we think, has reference solely to paid-up policies, and gives the holder of a policy who is entitled to extended insurance, under section 5983, the right to compel the company, within a limited time from the beginning of such extended insurance, to convert the extended insurance into a paid-up policy of a prescribed value, if he so desire, but that this right ceases at the expiration of sixty days from the date that the unpaid premium becomes due, and if no demand be made within that time the right to
95 paid-up insurance no longer exists. No demand for paid-up insurance was made in this case, and this section cannot be considered as controlling the rights of the parties to this action. Section 5986 exempts from the control of sections 5983, 5984, and 5985 policies of insurance which contain a provision for an unconditional cash surrender of a fixed minimum amount and policies which contain a provision for unconditional commutation to non-forfeitable paid-up insurance of a fixed minimum amount, and also exempts from the control of said sections cases wherein the holder of the policy shall, within sixty days after default is made in the payment of the premium, surrender the policy and accept from the company another form of policy, or such consideration as the holder of the policy may be entitled to under it.

This policy contains no provision for a cash surrender value, nor has anything been done by its holder to bring it within either of the two exempted cases.

The question then arises, does the policy provide for its own unconditional commutation to non-forfeitable paid-up insurance? The policy contains this provision:

"That if the premiums are not paid as heretofore provided, on or before the days when due, then this policy shall become void and all payments previously made shall be forfeited to the company, except that * * * if this policy, after being in force three full years, shall lapse or become forfeited for the non-payment of any premium, a paid-up policy will be issued on demand, made within six months after such lapse, with surrender of this policy," &c.

There can be no question but that it was a condition precedent to the right of the holder of the policy in question after it lapsed for the non-payment of premiums to a paid-up policy that demand be

made therefor, with surrender of the policy within six months after the policy lapsed, and no such demand could be waived by defendant so as to effect plaintiff's rights.

Hauthorne *vs.* Brooklyn Life Ins. Co., 5 Mo. App., 73, was a suit in equity to enforce specific performance of a contract of life
96 insurance. The policy contained the following clause: "After two annual payments should the party wish to continue (notice to the company being given before the next premium becomes due) the company will issue a paid-up policy for as many tenths of the amount originally as there have been annual premiums paid in cash." The assured paid more than two annual premiums. On December 28, 1871, another premium became due, which he failed to pay. In January, 1872, he notified the company that he wanted to discontinue his policy, and demanded a paid-up policy, which the company refused to issue, upon the ground that the assured had failed to comply with the conditions in the provisions of the policy quoted. It was held that by an express term of the policy the defendant had a right to notice before the then next premium became due of the assured's wish to discontinue, and to demand a paid-up policy, which was a condition precedent to his right thereto, and in the absence of such notice he was not entitled to recover.

Knapp *vs.* Homeopathetic Life Ins. Co., 117 U. S., 411, was a suit upon a policy of life insurance which provided "that unless this policy shall be surrendered and such paid-up policy shall be applied for within ninety days after such non-payment, as aforesaid, then this policy shall be void and of no effect, and it was held that the surrender of the policy and the application for a paid-up policy within ninety days after non-payment of the premium were conditions precedent to plaintiff's right to recover."

The same rule is announced with respect to policies containing similar provisions in the following cases: Sheerer *vs.* Manhattan Life Ins. Co., 16 Fed. Rep., 720; Northwestern Mutual Life Ins. Co. *vs.* Barbour *et al.*, 17 S. W. Rep., 796; Hudson *vs.* Knickerbocker Life Ins. Co., 28 N. J. Equity, 167; Coppey *vs.* Universal Life Ins. Co., 10 Bissell, 354.

97 Price *vs.* The Connecticut Life Ins. Co., *supra*, was a suit upon a life-insurance policy containing this provision, viz: "If after the payment of two or more annual premiums as above, any subsequent premium or installment of premium be not paid when due, said company do thereupon and thereafter, and upon the same consideration hereinbefore set forth, but without further payment of premiums, insure said life for said term, but only in a sum to be ascertained by the table of paid-up insurance indorsed herein and hereby made a part of this contract, such sum to be payable at the time and place and in the manner and to the persons above named."

In that case the assured died after having made two full annual premiums on said policy. The last installment was paid March 4, 1888. The administrator of the assured claimed that the policy at the date of the payment of the last installment of premiums had

acquired a net value of eighty dollars, to be computed according to the terms of the policy, and that three-fourths of such net value taken and applied as a net single premium for temporary insurance for the full amount written in the policy entitled the insured to temporary insurance for $2,000 for a term expiring March 4, 1889, and brought suit for that sum.

The defendant company resisted the recovery on the ground that the value of the policy and the amount which the representatives of the assured were entitled to recover thereunder must be determined by the terms of the contract between the assured and the company, and not by the provisions of the statute of the State of Missouri, the provisions of which were expressly waived by the parties and were inapplicable under the exceptions made by section 5986.

98 As there had been paid more than two full annual premiums *paid* on the policy, plaintiff claimed temporary insurance under section 5983, but the court held that the clause in the policy quoted provided for the unconditional commutation of the policy to non-forfeitable paid-up insurance; that the policy come within the second exception of section 5986, and that plaintiff was entitled to paid-up insurance, according to the terms of the policy, and not to temporary insurance under the provisions of section 5983.

It does not appear that the policy in suit in that case required that a demand for a paid-up policy be made on the company at any time before it would agree to issue such a policy, in which event plaintiff's policy would have been a conditional one, and would have entitled the holder to temporary insurance for the face of the policy under section 5983, but in the case at bar the policy required that demand be made for a paid-up policy within six months after default in the payment of premium, before the holder was entitled to a paid-up policy. Whether the holder would exercise that right or not was discretionary with him and not for defendant to decide for him. It follows that the policy in suit is not governed by section 5986.

It is, however, controlled by sections 5983 and 5985.

By section 5983 three-fourths of the net reserve is applied on the policy as a single premium, which continues the full amount of the policy in force and then prescribes a rule for fixing the term for which such temporary insurance shall be in force.

By section 5985 it is provided that if the death of the assured occur within the term of temporary insurance covered by the policy the company shall be bound to pay the amount of the policy, less the unpaid premiums, with compound interest thereon at six per cent.

99 The policy was a fifteen-year payment life, issued May 11, 1887, for $10,000; age of the assured at that time was 49 years. Four annual premiums of $589.50 were paid on it, default being made in the payment of the premium which fell due May 11, 1891. Its net value, based upon American experience table of mortality, with interest at 4½ per cent. at the date of default in

payment of premium, was $1,957.21. Under section 5983 of the statutes three-fourths of the net value, or $1,467.91, is applied as a single premium for temporary insurance at the attained age of the insured at the time of default in payment of premium.

The insured at time of default in premium in this case being 53 years old and the amount to be applied as a single premium for temporary insurance $1,467.91, the insurance is in force for a period of nine years and seventy-one days from date of lapse, May 11, 1891, and upon this basis plaintiff is entitled to recover.

It is well settled that the legislature of the State has the power to pass laws regulating and prescribing rules by which foreign insurance companies may do business in this State and to prohibit them from doing so altogether if so inclined. Paul *vs.* Virginia, 8 Wall., 168; State *vs.* Stone, *supra;* Hooper *vs.* California, 155 U. S., 648; Daggs *vs.* Insurance Co., *supra.* This case has recently been affirmed by the Supreme Court of the United States.

It logically follows that in passing the sections of the statute quoted the legislature did not exceed the powers conferred upon it by the State constitution, and that such legislation is not in conflict with any provision of the Constitution of the United States.

For these considerations we reverse the judgment and remand the cause, with directions to the court below to enter up judgment for plaintiff in the sum of $8,749.21, with interest thereon from November 30th, 1892, at six per cent. per annum, in accordance with the views herein expressed.

Gantt, C. J.; Sherwood, Brace, Robinson, JJ., concur; Marshall, J., absent; Valliant, J., not sitting.

G. D. BURGESS, *J.*

100 And on the same day the further following proceedings were had in said cause, viz:

FANNIE CRAVENS, Appellant,
vs.
NEW YORK LIFE INS. CO., Respondent.

Now, at this day, there is presented to Hon. James B. Gantt, chief justice, a writ of error to the Supreme Court of the United States; a citation directed to said appellant, citing and admonishing her to be and appear at a Supreme Court of the United States on the 20th day of April, 1899; an assignment of errors and a supersedeas bond in the sum of $25,000.00 *dollars;* which said writ of error is allowed, said citation signed, said assignment of errors filed, and said bond approved, ordered filed, and made a part of the record herein.

101 Which said assignment of errors is in words and figures as follows, to wit:

In the Supreme Court of the State of Missouri.

FANNIE CRAVENS, Defendant in Error,
vs.
THE NEW YORK LIFE INSURANCE COMPANY, Plaintiff in Error.

Now comes The New York Life Insurance Company, plaintiff in error in this cause from the Supreme Court of the United States to the supreme court of the State of Missouri, and says that in the record and proceedings in this cause there is manifest error, and said plaintiff in error makes this its assignment of errors herein:

First. The decision and judgment of the supreme court of the State of Missouri, in construing the statute of Missouri, sec. 5983 to 5986, R. S. 1879, as denying the right of the parties to the contract of insurance sued upon to agree upon the applicatory law of said contract, violated the right, privilege, and immunity of this plaintiff in error, protected by the Constitution of the United States and the fourteenth amendemnt thereof.

Second. The said statute of Missouri, as construed by said decision and judgment, is violative of the rights of this plaintiff in error under the Constitution of the United States and the fourteenth amendment thereof.

Third. The said statute of Missouri, as construed by said decision and judgment, making a new contract for the parties different from the contract made between the parties, is violative of the rights of this plaintiff in error under the Constitution of the United States and the fourteenth amendment thereof.

Fourth. The said statute of Missouri, as construed by the said decision and judgment, is an attempted regulation of commerce between the States.

102 Fifth. The said statute of Missouri, construed by said decision and judgment, denies plaintiff in error its contractual liberty without due process of law and is violative of the fourteenth amendment of the Constitution of the United States.

Sixth. The decision and judgment of the supreme court of Missouri is against the law.

Seventh. The decision and judgment of the supreme court of Missouri should have been in favor of this plaintiff in error, and the judgment of the circuit court herein should have been affirmed.

Wherefore this plaintiff in error filed this its assignment of error herein and prays that the judgment herein rendered by the supreme court of the State of Missouri be reversed.

F. N. JUDSON, *Attorney.*

And which said bond is in words and figures as follows, to wit:

Know all men by these presents that we, The New York Life Insurance Company, as principal, and Festus J. Wade, as surety, are held and firmly bound unto Fannie Cravens in the full and just sum of twenty-five thousand dollars ($25,000.00), to be paid to the said Fannie Cravens, her heirs, executors, administrators, and as-

signs; to which payment, well and truly to be made, we bind ourselves and our representatives jointly by these presents.

Sealed with our seals and dated this — day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at the October term, A. D. 1898, in the supreme court of the State of Missouri, in a suit depending in said court between said Fannie Cravens, as plaintiff, appellant, and said New York Life Insurance Company, as defendant, respondent, said cause was reversed and remanded to the circuit court of Jackson county, with instructions to render judgment in favor of said Fannie Cravens and against said New York Life Insurance Company in the sum of eight thousand seven hundred forty-nine and $\frac{21}{100}$ dollars
103 ($8,749.21), with interest at six per cent. per annum from November 30th, 1892, and the New York Life Insurance Company has sued out a writ of error, returnable to the Supreme Court of the United States, to reverse the said judgment of the supreme court of Missouri, directed to the said supreme court of the State of Missouri, and a citation has been directed to the said Fannie Cravens, citing and admonishing her to be and appear in the Supreme Court of the United States, in the city of Washington, on the second Monday in October, 1899, now, the condition of the above obligation is such that if the said New York Life Insurance Company shall prosecute said writ of error to effect and answer all damages and costs, if it fails to make good said plea, then the above obligations to be void; otherwise to remain in full force and virtue.

NEW YORK LIFE INSURANCE COMPANY,
By F. N. JUDSON, *Attorney.*
FESTUS J. WADE.

Approved:
JAS. B. GANTT,
Chief Justice.

O K.
W. B. C. BROWN.

STATE OF MISSOURI, *sct:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the case of Fannie Cravens against The New York Life Insurance Company as fully and complete as the same appear of record and on file in my said office.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 23rd day of March, A. D. 1899.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No., 17,368. Missouri supreme court. Term No., 262. The New York Life Insurance Company, plaintiff in error, *vs.* Fannie Cravens. Filed April 14th, 1899.